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25 Reported by

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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

HENRY M. DUQUE, Member
Public Utilities Commission

SENATOR QUENTIN KOPP

SENATOR BILL LEONARD

KENNETH J. O'BRIEN, Inspector General
Youth and Adult Correctional Agency

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Duque is our first appointee to chat with. Come on up to the table, if you will, sir.

MR. DUQUE: Yes, sir.

CHAIRMAN LOCKYER: Good afternoon.

MR. DUQUE: Good afternoon.

CHAIRMAN LOCKYER: Nice to see you again.

MR. DUQUE: Good to see you.

CHAIRMAN LOCKYER: You want to start with a little statement?

MR. DUQUE: I was waiting for Senator Kopp.

CHAIRMAN LOCKYER: We've called.

MR. DUQUE: What is your advice?

CHAIRMAN LOCKYER: Go ahead.

MR. DUQUE: Fine.

I appreciate the opportunity to speak to you all today.

My past year as a Commissioner, I've come to appreciate the challenges of this position. This past year's also convinced me that I can make a difference to the CPUC. The Commission has to oversee effective regulation in several dynamic industries. This seems like a tall order. Then I compare it with what you all are doing, which is something that affects all Californians, and in some ways it appears to be humbling.

I don't know that there's any one, quote, best background for a Commissioner. My background, as you know, is basically a manager of a savings and loan over the past thirty

1 years.

2 This -- a job like that requires constant assessment
3 of risks and investment, dealing primarily with finance. The
4 work takes careful judgment on a case-by-case bases. That
5 experience has taught me caution in the face of uncertainty.

6 I began in the savings and loan industry in the early
7 '60s. The industry at that point helped Californians save and
8 finance homes. These were during years of rapid growth. This
9 was an industry that was closely regulated by the federal
10 government and by the state. The markets were calm, with the
11 fed targeting interest rates.

12 Then came the '70s and '80s, with regulation and
13 unstable financial markets. Lending long and borrowing short
14 led to many sleepless nights on my part. That experience taught
15 me patience in the face of turmoil.

16 This business experience, I feel, is very useful. The
17 Commission presents new challenges to that experience. These
18 challenges include making the regulatory process more responsive
19 to dynamic markets, to consumer needs, and to you in the
20 Legislature as the representative of the general interests in
21 California.

22 I am and always have been a hands-on manager. I've
23 attended hearings on the cases assigned to me to get a more
24 comprehensive view of the process that we have. When problems
25 appear, I try to work quickly with the assigned judge to develop
26 what I hope are effective and fair solutions. When opportunity
27 to settlement arise amongst diverse interests, I work with the
28 judge.

1 Currently, I oversee 108 cases. This is a list that's
2 going to get larger. My guess is it'll probably get up to 300
3 cases. But currently, I have 52 in telecommunications, 20 in
4 energy, 16 in transportation, and 20 in water.

5 My -- I'm told that I'm the first commissioner since
6 Bill Bagley to really have an interest in water on the
7 Commission. Those of you who are my age will remember the Great
8 Gildersleeve, and I am referred to many times as the Water
9 Commissioner.

10 This challenge goes beyond my own case management. The
11 Commission needs to manage its workload more effectively and
12 promptly, which is going to require a more proactive management
13 to anticipate the problems and encourage settlements in dynamic
14 markets.

15 With such dynamic markets, I would support a change in
16 judicial review if it will not prolong the determination of the
17 cases. Many of our cases, I believe, take far too long.

18 I do support close coordination of the Energy
19 Commission to use the staff resources that they have available.
20 I do support the Vision 2000, which you've all been exposed to.
21 I believe that the Vision 2000 is just the beginning. It's a
22 living document. It's something that is going to continue to
23 grow. It's going to be fine-tuned.

24 As a matter of fact, one of the products of Vision
25 2000, doing things on a basis -- an internal basis of reform, I
26 was the lead Commissioner on selecting our new Executive
27 Director, Wes Franklin, who is here in the audience today.

28 I want to turn to Commission policy and my views on the

1 role of regulation. We must start by supporting the existing
2 physical and human infrastructure. I want to encourage
3 competition. Effective competition can serve the customer,
4 and when I say customer, I use customer and ratepayer
5 interchangeably, but in this new world, these are our
6 customers.

7 But competition isn't just a word. To move from
8 regulation to competition requires care to protect the consumer
9 and to develop the markets. I see an enduring role for the
10 Commission in ensuring open entry in the market in protecting
11 consumers.

12 In telecommunications during the past five years, we've
13 moved far down the path of deregulation, introducing incentive
14 regulation and allowing entry in most markets. However, we are
15 still finding our way on this path. Just recently, I sponsored
16 an alternate decision which revises the incentive rule for local
17 exchange companies in order to balance the interests of the
18 consumer, the employees, and the shareholders.

19 In electricity, as you all know, we just issued our
20 policy decision. This relies heavily on the Memorandum of
21 Understanding. It's utility, consumer, and independent power
22 interests negotiated last year. Our road map decision encourages
23 all interested parties to participate in working groups to help
24 us develop guidelines for implementing policy.

25 But open entry and competition does not solve all
26 problems. Recently, we have received complaints about slamming.
27 This occurs when a long-distance phone carrier switches a
28 customer without the customer's consent.

1 I believe that we are now developing an effective
2 strategy which attacks this problem. This is a problem that I
3 know you're aware affects all consumers in this state.

4 I've tried to review my experience and my views on
5 regulation. I ask for your confirmation, and I'm ready to
6 respond to any questions which you may have.

7 Thank you.

8 CHAIRMAN LOCKYER: Senator Kopp.

9 SENATOR KOPP: Thank you very much, Mr. Chairman. My
10 apologies to the Committee and to Mr. Duque for not being here
11 to present him. But from the presentation portion I heard, I
12 think that would be carrying coals to New Castle.

13 I do, however, want to express myself in strong and
14 unremitting support of the confirmation of Mr. Duque. I do so
15 because of two primary reasons.

16 I think in evaluating a nominee for the Public
17 Utilities Commission, it is wise to reflect on the history and
18 the reason for the creation of the Commission. And there are
19 two, I think, quintessential qualities that are a part of
20 necessary qualifications.

21 First is the intellectual integrity and the
22 intellectual honesty to serve the public as a member of the
23 Commission in the ways which reflect the reason for the creation
24 of the Commission.

25 I like the reference made to the use of the word
26 consumer and ratepayer, because that's a strong part of the
27 reason for which the Commission was created.

28 The second quality is the intellectual capacity, the

1 mental capacity, and the desire and energy to assume
2 responsibility for the numerous kinds of actions which are a
3 part of the Commission's Constitutional and statutory
4 provisions. And I wouldn't at all minimize that quality as a
5 necessary quality in any nominee who was worthy of
6 confirmation.

7 Mr. Duque has imparted to you his wide and his strong
8 background in business, but I think equally as significant are
9 the number of different responsibilities which he has as assumed
10 in the past several months of his membership on the Commission.
11 I know personally of his devotion to those responsibilities.

12 I know of no incident or incidence in which he has
13 failed in those responsibilities, and the fact of his several
14 months of service is a barometer of his ability to continue to
15 serve during the term of his appointment to the Commission.

16 Mr. Chairman and Members, I sincerely and genuinely --
17 and I'm glad Senator Petris is here at least to hear my final
18 comments -- I sincerely urge that the Committee recommend his
19 confirmation to the full State Senate.

20 Thank you.

21 CHAIRMAN LOCKYER: Thank you, Senator.

22 Let's talk for a few minutes about electric
23 restructuring. Can you try, maybe, to explain to us, as people
24 who are essentially lay Members of the Legislature who don't
25 spend every minute involved in the details of a program or
26 policy that is as complex and controversial as that, what did
27 the three-two vote mean?

28 MR. DUQUE: The three-two vote, Senator, was -- there

1 is a very small philosophical difference. I liken it to --
2 well, two months before the decision, I looked at a set of
3 bookends. And as we were getting close to December 20, the
4 bookends were getting much closer.

5 It's a philosophical difference, and it's basically
6 over direct access. The majority opinion felt that immediate
7 direct access would cause chaos and confusion when it came to
8 the consumers. And as you know on the Commission, in theory it
9 may take, you know, five years before everything gets done.
10 That's the outside, but our feeling is that it could be done
11 sooner. A lot depends on what input we get from the utilities,
12 from the interested parties.

13 But it was basically a philosophical difference on
14 direct access and the timing of direct access. My guess is, if
15 we could hold the vote a year from now, you'll probably see
16 unanimity. It was very close to a 5-0 vote.

17 CHAIRMAN LOCKYER: The majority view was it would just
18 be, what, it would be too disruptive of the market, and the
19 market stability to move that quickly?

20 MR. DUQUE: Yes, sir. Disruptive of the market, but
21 also disruptive from the consumer's standpoint. And not so much
22 the large users, but it's what I would term the Mom and Pop, the
23 cleaners, and also the individual ratepayer, the individual
24 customer.

25 One of the things that has happened in telephone
26 deregulation is that I'm not so sure that every customer knows
27 who's their long-distance carrier. I think that's a confusion
28 that we don't want, or we hope to avoid in electric

1 restructuring.

2 CHAIRMAN LOCKYER: I'm sure, in fact, that there's so
3 many, since Ma Bell got schizophrenic, there's so many pieces of
4 the industry that it's kind of hard to follow who does what.

5 MR. DUQUE: Yes, it is. And it's difficult for us to
6 follow, but I think we're on top of it.

7 CHAIRMAN LOCKYER: Well, I want to defer to other
8 Senators.

9 Senator Leonard, thank you for joining us. We know you
10 and Senator Peace play a major role in the reformed discussions
11 that are currently under way again, so we invite you to
12 participate whenever you're so moved.

13 SENATOR LEONARD: Mr. Chairman, a follow-up to your
14 question would be what Commissioner Duque thinks the role of the
15 Legislature is in implementing energy restructuring? I think
16 the Committee might have an interest in your views.

17 MR. DUQUE: I believe, as I believe you know, Senator,
18 and I know Senator Peace knows it, my feeling is that the
19 Legislature and the Commission have got to work together.
20 Neither of us have all of the answers. And I, for one, and I
21 really believe that all the Commissioners are intent on working
22 closely with the Legislature.

23 To me, it's imperative, because I don't have infinite
24 wisdom, and I don't know anybody that does. To me, it's a team
25 effort. It's like anything that I've done in business time
26 after time, if everybody works on something, you're going to
27 have a solution one way or another.

28 That's why I was really pleased to see the MOU, because

1 I think without the MOU, Lord knows what sort of a decision we
2 might have had. I mean, we might still be debating it
3 internally with no decision at this point.

4 SENATOR LEONARD: Just a follow-up.

5 So, energy restructuring will not go forward without
6 some affirmative concurrence of the Legislature?

7 MR. DUQUE: We will work with the Legislature, yes,
8 sir. We want to work with the Legislature.

9 CHAIRMAN LOCKYER: Is there a need for any statutory or
10 fiscal policies, or work to be done here?

11 MR. DUQUE: Senator, I think there will be down the
12 line within the not-too-distant future.

13 A lot is going to depend -- we are still out for
14 comment from the industry, from everyone. And once all those
15 comments get in, we can then weigh them.

16 But I, for one, and I believe I can speak for the rest
17 of my colleagues, that we want to work with the Legislature.

18 Even if we didn't, we've got to do it. Otherwise,
19 nothing's going to get done, and the poor ratepayer, poor
20 customer, there's going to be -- something's going to happen to
21 him that none of us would like.

22 CHAIRMAN LOCKYER: Is this happening in other states?
23 Are we ahead?

24 MR. DUQUE: It's hard to say. Massachusetts is doing
25 something, so is Pennsylvania. I believe Massachusetts has
26 something like a two-year timeframe, and some people have
27 said -- I just came back from a meeting in Washington -- people
28 have said, well, Massachusetts can do it faster than you can. I

1 said, well, maybe they can. I don't know. I mean, no one's done
2 it before.

3 My personal feeling is, if we can do it in two years,
4 that's fine. But if it takes five years, let's take five years
5 and do it right.

6 And Pennsylvania's doing something, but I don't know
7 what they're doing with the CTC. It may be that -- well, I
8 honestly don't know. There is a bill before the Pennsylvania
9 Legislature which I was made aware of, but I haven't had a
10 chance to look at it.

11 CHAIRMAN LOCKYER: Senator Ayala.

12 SENATOR AYALA: In the PUC's recommendation to the
13 industry to restructure, you give them two proposals. What
14 you're saying about the people, they might down-size the
15 industry, which means a lot of people go out of work. The PUC's
16 recommending retraining and early retirement.

17 Did you ever consider some way of giving severance pay
18 to these people to encourage them to retire early?

19 MR. DUQUE: Yes, I have. And my interpretation of what
20 we said includes severance pay. Granted, it does not
21 specifically say that. I mean, it will at some point, but that
22 is a part of it.

23 SENATOR AYALA: But the PUC is encouraging that for the
24 industry, encouraging them to do thank?

25 MR. DUQUE: Yes, the purpose of deregulation in the
26 electric industry is primarily to lower the cost of
27 electricity. The purpose is not to throw people out on the
28 street without jobs. That's not our motivation.

1 SENATOR AYALA: In the proposal, that is included, but
2 it didn't show? I didn't understand how you define that?

3 MR. DUQUE: Well, I think that will be clarified as we
4 go down the road.

5 As I say, my feeling was that it was an inference.
6 That's what I meant by it. But I don't see any --

7 SENATOR AYALA: Would it be in the proposal that that
8 became true?

9 MR. DUQUE: I hope so, it should be. I have no problem
10 with it.

11 SENATOR AYALA: Thank you.

12 CHAIRMAN LOCKYER: Let's jump, I guess, to judicial
13 review of PUC decisions.

14 Current law allows only the Supreme Court to do that.
15 They seem generally reluctant to do so. Various Senators over
16 the last several years have carried legislation that would allow
17 for some partial judicial review.

18 Have you had a chance to be involved in this debate?
19 Do you have any settled opinions about it?

20 MR. DUQUE: Some, yes.

21 My feeling is that any judicial review -- I mean, there
22 should be judicial I review. I would hope that whatever
23 judicial review we have, it does not slow down our process.

24 I know there's some thought that maybe we go to
25 District Courts of Appeal, and that may be a way. I certainly
26 would hope that we wouldn't go any lower than the District
27 Courts of Appeal, because a lot of the material that we handle
28 is pretty technical.

It may be, God only knows, you know, there may be a separate court set up; I don't know.

There's got to be judicial review, and there are some short comings with the way it is set up at present.

CHAIRMAN LOCKYER: Pursuant to your own personal opinion, you won't resist expansion of judicial review?

MR. DUQUE: No.

CHAIRMAN LOCKYER: That seems to be contrary to the Chair's view. Has he argued this point vigorously with you?

MR. DUQUE: Dan and I argue quite often.

CHAIRMAN LOCKYER: Maybe we ought to ask the for the list of what you've argued over.

[Laughter]

MR. DUQUE: Lots of things. He was in my office on Friday, talking about some things. And it's just -- we don't see eye to eye on everything, and we particularly don't on this.

I think his main concern is that the judicial review could end up in some lower court, and then we're just mired down and get no review. And that's -- I don't want that either, because I would like an expeditious review.

CHAIRMAN LOCKYER: I've never heard anyone propose lower than Courts of Appeal in any serious way.

MR. DUQUE: I would hope not.

CHAIRMAN LOCKYER: And then, one of the debates is, would it always have to go to the same one, or could it go to different courts, and uniformity of judgement.

MR. DUQUE: I can't answer that because I'm not an

1 attorney. I would hope that it would go to one where you would
2 have uniform hearings.

3 CHAIRMAN LOCKYER: There are some that worry that that
4 might be too much of a burden on that one forum.

5 MR. DUQUE: It might be, I don't know.

6 CHAIRMAN LOCKYER: And distinguishing between what are
7 policy judgments that shouldn't be reviewable, that are
8 different from legal-type decisions that are appropriate to have
9 some judicial review of, I guess those have been the problems
10 we've dealt with.

11 I'm worried, because I think that the legislative
12 discussion this year of PUC reform, that is, the decision-making
13 process and environment -- which is in no way meant to be
14 critical of existing Commissioners, just a view that there's a
15 need for it -- in much same way that the Telecommunications Act
16 at federal level creates an institutional environment or
17 regulatory environment that recognizes the market roll, that
18 hopefully, that that discussion will be successful this year.
19 I'm counting on Senator Peace and Leonard and others in our
20 House, but principally those two.

21 MR. DUQUE: And I would like to work with Senator Peace
22 and Senator Leonard.

23 CHAIRMAN LOCKYER: Judicial review seems to be one of
24 the areas that have caused problems in the past. It's always
25 interesting. I don't know what causes this, but when a
26 Legislator, or especially a Governor, has made up their mind
27 about one little piece of the puzzle, as Governor Wilson, I
28 think it is fair to say, has very, very strong opinions about

1 this topic, well, that's been the problem, basically.

2 But I think it emanates from Professor Fessler being
3 too persuasive on previous occasions.

4 MR. DUQUE: That could very well be. It could very
5 well be.

6 CHAIRMAN LOCKYER: Do you have any sense, if all your
7 efforts are successful at electrical restructuring, what might
8 the world look like? What might California look like in terms
9 of its prices and availability of energy? What would you hope
10 would happen 10-20 years from now?

11 MR. DUQUE: There should be appreciably lower rates.
12 There should be -- I think that the consumer will have any
13 number of avenues available to he or she as to where they can
14 get -- from whence they can get their electricity.

15 One thing, our concern is reliability, and so forth and
16 so on.

17 I see the Commission's role in electric restructuring
18 and a lot of things -- I mean, granted, there will still be
19 monopolies left, be it water -- I mean, there still are
20 monopolies around, but so far as electric restructuring is
21 concerned, I see us more in an oversight role, more -- acting
22 more as a referee. If we see that somebody's trying to throw a
23 curve ball at your head, we hopefully will get there before the
24 pitch gets to you.

25 CHAIRMAN LOCKYER: It's been almost a year now looking
26 at this process and structure from the inside.

27 Do you have any reflections to share with us on reforms
28 or changes in the institutional environment that we should hear

1 from you?

2 MR. DUQUE: Yes, I do, as a matter of fact.

3 I feel that there should be reform both inside and
4 outside. Vision 2000 takes it to a point. Vision 2000,
5 however, deals, I think, primarily with the Commissioners. It
6 doesn't really deal with the Commission.

7 I think things have to be to be done at the
8 Commission. Things have to be streamlined. I am interested in
9 process. My feeling is that most everything we do takes way too
10 long.

11 I've had some success, particularly in the water area
12 where small water companies, C and D water companies, would file
13 for rate increases and had to fill out a 42-page application.
14 If you know C and D water companies, they're maybe a husband and
15 wife and somebody else involved in the water company. And you
16 give them a 42-page application, they're lost. I mean, they're
17 not CPAs.

18 We now -- I was able to work with our water branch. We
19 cut that down to two pages, and it's this sort of thing.

20 We have got to be -- we are a service organization. We
21 used to be strictly a regulatory operation. And I believe that
22 the age of regulation, in most areas, is behind us.

23 And I have trouble on the Commission dealing with
24 individuals, staff individuals, who feel that we've got to
25 regulate. In other words, the inference is that the utility is
26 basically wrong.

27 I'm not convinced that the utility is basically wrong.
28 The utility, or a water company, or whatever it happens to be,

1 they are running a business. And I am not smart enough to
2 micromanage their business, and I don't want to do it, and I
3 don't think that others on the Commission should. The
4 Commission shouldn't be a micromanager, and the Commission has
5 been micromanaging.

6 I think that's what happens in regulation. Yes, I have
7 some opinions on it.

8 CHAIRMAN LOCKYER: That's good. They sound
9 constructive, frankly.

10 Did you want to put any meat on the bones of any of
11 those specific proposals?

12 I think we understand your general thrust.

13 MR. DUQUE: Not specific, but my feeling is that we're
14 going through a reorganization right now. And the purpose of
15 the reorganization not to increase staff at the Commission.

16 And my feeling is, I don't care how many people we
17 have, but they'd better be damn good people to do the job, serve
18 the customer.

19 CHAIRMAN LOCKYER: Did I see Senator Ayala?

20 SENATOR AYALA: I had a question.

21 Are you familiar with SCA 21?

22 MR. DUQUE: Not by number. Tell me a little more.

23 SENATOR AYALA: That's one that would eliminate the
24 PUC, and in its place, come up with an Energy, Utilities, and
25 Communication Commission. Four members would be elected --

26 MR. DUQUE: I am familiar with that.

27 SENATOR AYALA: -- and the Chairman would be the
28 Governor's selection.

1 Do you have a position on that SCA 21?

2 MR. DUQUE: Yes, I do, as a matter of fact.

3 CHAIRMAN LOCKYER: It's okay to say it's a dumb idea if
4 you want.

5 MR. DUQUE: It's not a dumb idea. If it were a dumb
6 idea, I would say so. It may not be the world's best idea, but
7 it's not a dumb idea.

8 My feeling is that both commissions were created for
9 really different purposes. I see down the road, maybe two
10 years, three years, I see a merging of the two commissions,
11 because the Energy Commission was designed for an area that I'm
12 not sure exists anymore.

13 They're doing some things that do exist, but there is
14 some duplication between the two. I think the duplication
15 should be eliminated.

16 My guess is that ultimately, we should have one
17 commission. I don't care what you call it, but one commission.

18 SENATOR AYALA: What about the election of four
19 members and the appointment by the Governor of the President or
20 Chairman of the Commission? Would you support that?

21 MR. DUQUE: No, sir, I would not, only because knowing
22 what my work schedule is now, if I have to go out and run for
23 election in addition, there's just not enough hours.

24 SENATOR AYALA: Your argument against it would be that
25 the members would be subject to lobbyists and so forth, but on
26 the other hand, they'd be more responsive to somebody.

27 They are now, once they're approved by the Senate, you
28 can't even touch them with a 10-foot pole.

1 MR. DUQUE: Maybe that's true, but I don't believe
2 that. I mean, as I say, maybe it's true, but I don't see that
3 with the current group of Commissioners. We don't have a
4 cavalier attitude towards the ratepayer. I mean, it's the
5 ratepayer, it's the customer that we're there to protect.

6 So, I for one and the other four Commissioners, I mean,
7 we do got involved in our cases. And I think this is vitally
8 important. That's the only way you find out what's going on.

9 When you and I were talking this morning, Senator, you
10 suggested that, you know, maybe the Commissioners don't listen
11 to municipalities, and so forth and so on.

12 I will listen -- I mean, if Mayor So-and-so wants to
13 talk to me about a subject or any subject, I will listen to him,
14 because I figure he's got something to say. I believe that very
15 strongly.

16 SENATOR AYALA: We discussed that this morning, where
17 we feel some of the constituents don't know where to go when
18 they have a problem with the PUC. And they call our offices,
19 and there's not much we can do with helping them, except get
20 them in touch --.

21 MR. DUQUE: Anytime -- as I've told every Senator that
22 I've talked to, A, you can call me if you want to, and I will
23 get -- we have teams that go out and will give briefings. If
24 somebody has a problem, we will go out and try and solve that
25 problem. If there's a utility involved, we will bring the
26 utility along.

27 SENATOR AYALA: You told me that this morning.

28 MR. DUQUE: Yes, sir. That's sort of standard

1 operating procedure for us. And it's going to be more and
2 more.

3 I mean, there was a time, before I came, but the
4 Commission never seemed to really get out. I mean, sort of
5 closeted yourself on the fifth floor of 505 Van Ness.

6 I know that the current Commissioners do not feel that
7 way. We believe that we should be out in the community. We're
8 doing a lot more in the way of workshops and public meetings,
9 which I find very invigorating because then you find out what
10 people are thinking, because I can't -- there's a little
11 isolation sometime on the fifth floor at 505 Van Ness which I
12 don't like.

13 SENATOR LEONARD: Mr. Chairman, can I follow up on
14 Senator Ayala's question. A case in point came to mind that
15 Senator Ayala reminded me.

16 I think City of Palm Springs is most exercised about a
17 recommendation of the Division of Ratepayer Advocates for a rate
18 increase, that the utility didn't ask for, that's now supported,
19 as I understand it, by an administrative law judge
20 recommendation.

21 Have you had feedback on that case in your open-door
22 policy?

23 MR. DUQUE: Yes, quite a bit. I understand today, the
24 FAX machine and the telephone are just running wild.

25 The answer is yes. I've heard from a lot of people all
26 the way along. Hopefully, we'll vote on it on Wednesday.

27 And as Senator Ayala said this morning, he said, well,
28 staff has recommended. I said, well, just because the staff

1 recommends, that doesn't mean the Commissioners vote for it.

2 SENATOR LEONARD: Do the rules allow you to meet with
3 individual groups or ratepayers?

4 MR. DUQUE: Yes, and we do.

5 SENATOR LEONARD: You've done that in this case?

6 MR. DUQUE: Yes, sir, I have. I believe all of us
7 have.

8 Usually, you know what happens. A group will make the
9 rounds, but not always, and there's some Commissioners may not
10 see them.

11 SENATOR LEONARD: But the Commission has never met in
12 formal hearing on this matter as yet, so there hasn't been a
13 group discussion. It's all been private meetings.

14 MR. DUQUE: No, it has come out in public meetings.

15 SENATOR LEONARD: Were the Commissioners present?

16 MR. DUQUE: Yes, I think in February, as I recall. And
17 the Commissioners are aware of this. We know -- Commissioners
18 aren't being blind-sided. I think we're -- I know I, for one,
19 am fully aware, and I'm assuming that the others are.

20 Since communications are not the easiest, I can't say
21 for sure. But through my advisors, it's my understanding that
22 the other Commissioners are aware of that particular case.

23 SENATOR LEONARD: One of my frustrations, Mr. Chairman,
24 is the communications are through their advisors to each other,
25 Commissioners. I'm not sure what's the fairest set of rules,
26 but whereas you and I can talk to each other, they either feel
27 restricted or are restricted in the legal interpretation and
28 talk through their staff. It's got to be a difficult way to

1 work.

2 MR. DUQUE: It's almost impossible. I mean, it really
3 is. I've never experienced anything like this in business
4 before. And I do say, I marvel that we are able to get things
5 done.

6 It's not in the best manner, as far as I'm concerned.
7 I mean, I would be able -- you know, talk at public meetings,
8 that's fine. But I would like to be able to do just exactly
9 what you Senators can do. If I could do that, it'd make life
10 easier.

11 But I think that we could resolve things in a much more
12 timely manner. That's the thing that disturbs me. Things take
13 so long.

14 I've probably had half a dozen instances where
15 something is coming up before a Commission meeting, and some
16 Commissioner says, well, I haven't had a chance to read it, or I
17 don't know how you feel about it.

18 Well, this is -- that's also a part of the system
19 where sometimes things are brought to us at the last minute. I,
20 for one, have a little internal rule that if we don't get -- if
21 my office doesn't get something 48 hours before it goes on the
22 agenda, I won't entertain it, because I have to read it.

23 I'm more, as I say, I am hands-on, and I'm more the
24 tire kicker, door slammer, that sort of thing. So, I have to
25 see it to believe it, that's all.

26 CHAIRMAN LOCKYER: You're constrained from talking to
27 each other except at the time you have a public hearing?

28 MR. DUQUE: Right, a noticed public meeting.

1 CHAIRMAN LOCKYER: Do you log somewhere all contacts
2 from outside parties?

3 MR. DUQUE: Yes, yes. It's logged somewhere. I don't
4 know where, but everything's logged.

5 CHAIRMAN LOCKYER: You have to put down what they call
6 ex parte communications?

7 MR. DUQUE: Right.

8 CHAIRMAN LOCKYER: Do you know if there are any
9 exceptions to that, to what you have to log? Are there
10 exceptions, or do you have to list everything?

11 MR. DUQUE: Oh, I think everything has to be listed, at
12 least that's my understanding. I don't think there's any
13 running around the barn and getting in the back door.

14 CHAIRMAN LOCKYER: I think there may be exceptions of
15 people from the Governor's Office.

16 MR. DUQUE: Well, if there is, it's not known to me.

17 CHAIRMAN LOCKYER: You're still noting it when they
18 talk to you about issues? You're recording it?

19 MR. DUQUE: I get -- I guess, I mean, in eleven months,
20 I've had no guidance from the Governor's Office.

21 CHAIRMAN LOCKYER: Well, that's probably good. It
22 might be bad guidance. They counting on you to use your
23 judgement.

24 MR. DUQUE: At least it leaves me independent, and
25 that's what I believe in. I think that's why we're there.

26 CHAIRMAN LOCKYER: I totally agree with that.

27 The Division of Ratepayer Advocates, you've probably
28 heard both praise and criticism of their role. What have you

1 concluded in the last year?

2 MR. DUQUE: Well, they are necessary because they -- I
3 mean, they do similar to what TURN does or U CAN does, but it's
4 a little more detail.

5 I do feel that the -- I'm not saying they're always
6 right, but I do feel that the consumer gets good representation
7 from them. I think there is a place for DRA.

8 Now, whether -- it's a whole other subject of whether
9 DRA stays part of the Commission or becomes part of the Attorney
10 General's Office. That I don't know.

11 CHAIRMAN LOCKYER: Any thoughts about that
12 preliminarily?

13 MR. DUQUE: No, not really. I just -- I mean, their
14 function is necessary.

15 I guess my gut reaction is, if they're with another
16 department, they then may be too far away, because there is an
17 exchange that goes on in the Commission. I mean, I think it's
18 very helpful to have somebody there. You can reach out and grab
19 them and talk to them.

20 Once again, I'd rather talk to somebody personally than
21 talk on the telephone.

22 CHAIRMAN LOCKYER: Other questions from Members?

23 SENATOR PETRIS: I think all of us have heard about
24 TURN over the years. Are there other consumer groups that
25 monitor your meetings or at least attend them once in a while?

26 MR. DUQUE: TURN and U CAN are the two major ones.
27 There's another one, the name goes right out of my head, but
28 it's A-something.

1 But yes, they do monitor. They're watch dogs. I think
2 that's good, because they are -- I think the consumer, the
3 customer, should get all the representation that they can get.

4 SENATOR PETRIS: Are they allowed to meet with each
5 member individually?

6 MR. DUQUE: Yes, sir. TURN does fairly often. U CAN,
7 which is San Diego based, not as often. I think it's due
8 primarily to the smaller staff, I don't know, but I've had both
9 of them in my office.

10 Quite honestly, I welcome both of them, because
11 sometimes you get a very fresh view of what's going on out
12 there. Then you've got to weigh one against the other to make a
13 decision.

14 CHAIRMAN LOCKYER: I guess finally I'd appreciate
15 learning from you your explanation of the nature of the
16 controversy, what's at stake, and what you think a fair result
17 might be with respect to stranded costs?

18 MR. DUQUE: Well, I can tell you right now that if the
19 stranded costs, if we were to take the stranded costs and make
20 the shareholders pay for them, 100 percent, there'd be bankrupt
21 utilities in this state. There is no doubt in my mind. So
22 really --

23 CHAIRMAN LOCKYER: I'm not recommending that, but just
24 paint the picture.

25 MR. DUQUE: I understand that.

26 But my feeling is that the shareholder should pay the
27 bulk of it because it was a risk.

28 However, when all this came to pass -- it was before my

1 time, but as I understand it -- I mean, we had the energy
2 crisis. Nuclear was the thing to do. The companies were told,
3 okay, put up nuclear, do all of these things.

4 So, I'm not so sure that you can blame the utilities
5 for that. I mean, I think maybe perhaps the government, the
6 regulators, somebody else was at fault, and they said, okay,
7 this is what you're going to do.

8 It's hard for me to say, okay, we told you -- I don't
9 mean we, but somebody else told you to do this. Now, that's too
10 bad, now you pay for it. If you go out of business, that's too
11 bad.

12 I'm not -- I think there should be -- I should think
13 there should be a sharing, that's all.

14 But with the stockholder -- well, when you buy stock,
15 you're taking a risk. And I think you should be ready.

16 CHAIRMAN LOCKYER: I noticed that last week.

17 MR. DUQUE: What about today? I haven't heard.

18 There's some risk involved. It used to be, of course,
19 utility stocks were the guilt edge and great for widows,
20 orphans, so forth and so. But hopefully, the public has
21 realized in the last ten years that that's not true.

22 Although I do -- when I hear that a utility may have to
23 cut their dividend, I think, okay, here we go. Into our
24 hearing, there's going to be a thousand people trooping in and
25 blaming us.

26 CHAIRMAN LOCKYER: That the bills went up?

27 MR. DUQUE: Yeah, yeah.

28 CHAIRMAN LOCKYER: Now, I'm noting in our staff notes,

1 it talks about the competitive transition charge, the CTC, that
2 I guess is part of the current proposal.

3 MR. DUQUE: Uh-huh.

4 CHAIRMAN LOCKYER: It would contemplate 100 percent
5 recovery from consumers. That sounds different than what you --

6 MR. DUQUE: I'm not so sure that it will be 100 percent
7 when we get through. Somewhere there's a discount in there so
8 that the company's not getting away scot free.

9 CHAIRMAN LOCKYER: Let me inquire if there are other
10 questions from Members, first of all.

11 I'll ask if there's anyone present who wants to
12 testify, for or against. There's a rather lengthy list of
13 people who support the confirmation. I don't want to insist on
14 making you start to come forward, all make comments, but if
15 someone feels like they want to before we probably have a 5-0
16 vote here, or 4-0 here. John Lewis is AWOL, presenting a bill,
17 presenting a complicated bill.

18 Anyhow, anyone that wishes to comment.

19 Did you want to close in any way?

20 MR. DUQUE: No, sir.

21 CHAIRMAN LOCKYER: The Beverly motion.

22 SENATOR BEVERLY: Move we recommend confirmation.

23 CHAIRMAN LOCKYER: We have that motion. Call the roll.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Senator Lewis. Senator Petris.

27 SENATOR PETRIS: Aye.

28 SECRETARY WEBB: Petris Aye. Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Lockyer Aye. Four to zero.

5 CHAIRMAN LOCKYER: Sir, your reputation as fair,
6 open-minded and objective precedes you, and it's clear from your
7 comments and testimony why you deserve that reputation.

8 Additionally, your hard work is appreciated.

9 MR. DUQUE: And I will not change.

10 Thank you all very much. I appreciate it.

11 CHAIRMAN LOCKYER: Mr. O'Brien is next.

12 Thank you, Mr. O'Brien, for joining us. It appears
13 maybe you have some introductory statement.

14 MR. O'BRIEN: Yes, sir.

15 Thank you, Mr. Chairman, Members of the Committee. I
16 just wanted to comment on my opening statement in terms of my
17 background.

18 I'm pleased to have had the privilege of serving over
19 40 years in the criminal justice system shortly after my
20 discharge from the Marine Corps, and in 1955, I began with the
21 San Diego Police Department and retired as a deputy chief in
22 1986 with 31 years.

23 Most of my experience during those years were with the
24 investigative process in all aspects, from a detective up
25 through the supervisorial, managerial and administrative
26 positions, inclusive of the Internal Affairs assignments and
27 Inspection and Control, which is an audit procedure.

28 In 1968, upon my retirement, I was appointed Director

1 of Investigations to the State Bar. In that capacity, it was
2 very much very similar to the job I now am working as Inspector
3 General, in that I had the opportunity to organize an
4 investigative branch that received, evaluated, and investigated
5 or conducted follow-up investigations of complaints of
6 allegations of misconduct of the 114,000 attorneys that we then
7 had in California.

8 I left the Bar in 1989 and took a position with the
9 Commission on Peace Officer Standards and Training, POST. I
10 began serving as a law enforcement consultant in the Center for
11 Leadership Development, and then later I was promoted to Bureau
12 Chief and began my tour in Training Program Services, which was
13 inclusive of monitoring and updating all Academy trainings for
14 sheriff and police personnel throughout the state, as well as
15 technology in the sense of satellite training and video type
16 training.

17 In 1992, I was appointed to the Youth Authority as an
18 Assistant Director in charge of compliance, which was basically
19 oversight for the Internal Affairs function and also for the
20 fiscal audit function. And I also served as the Director's law
21 enforcement liaison for the Department.

22 In March of 1995, I left CYA to take the present
23 position in YACA as the Inspector General for the Youth and
24 Adult Correctional Agency.

25 CHAIRMAN LOCKYER: What would you regard as significant
26 accomplishments during the previous year? Any specific ones
27 that stand out in your mind?

28 MR. O'BRIEN: I think that my -- my intent, my goal in

1 terms of taking this job was recognizing that it was a brand new
2 job, and that it was somewhat controversial in many of the
3 areas, in that it was an agency-level job that could be seen as
4 being intrusive in the day-to-day operations.

5 My big effort in this entire process for the last year
6 was to establish credibility and a strong foundation within the
7 Inspector General's Office by virtue of the types of
8 investigations that we conducted, or the type of investigations
9 that we referred. Our interactions with the wardens, the
10 superintendents, the parole administrators, really beginning to
11 build a strong foundation that will last long after I'm gone and
12 for the next person who will have this position.

13 CHAIRMAN LOCKYER: Anything that was controversial
14 that you did that got people aroused during the foundation
15 laying here?

16 MR. O'BRIEN: I don't know that foundation laying -- I
17 think that when I first reported aboard as the Inspector
18 General, I had an assignment to do a rather extensive audit of
19 the California Youth Authority in terms of a number of areas
20 that were impacting both by the Youth Offenders parole Board and
21 CYA. And in that sense, a number of issues came up that were
22 controversial to some of the individuals.

23 But in the final analysis, I'm pleased to say, and
24 particularly with the support I received from the Director of
25 CYA, much of the information that we gleaned from that
26 Audit were received very well, and it led to number of
27 recommendations from within to correct deficiencies that they
28 noted.

1 CHAIRMAN LOCKYER: Maybe this happens to you. I bump
2 into people all the time that work in some department or unit in
3 Corrections that want to claim that there's a waste of money in
4 some particular area.

5 Do you hear those kinds of things as well? Does that
6 come to you?

7 MR. O'BRIEN: They've not been really the substance of
8 my -- of my jurisdiction regarding the oversight for
9 investigations.

10 During the audit, a number of issues came up where I
11 felt, based on my experience, that, for example, levels of
12 improvement of reports, investigative reports, that I didn't
13 feel were of a good enough standard. That was basically a
14 result of a lot of the cutbacks that they had made in the
15 organization.

16 However, I found in some instances some very innovative
17 superintendents who were compensating for that by different
18 methodologies.

19 I think money is always a question. I think that
20 there's been -- there was some real strong efforts when I was in
21 CYA to ferret out those issues where we were wasting money or
22 misappropriating money, that type of thing.

23 CHAIRMAN LOCKYER: Do you ever get a reaction from
24 superintendents or others, much like you see with maybe mostly
25 TV programs, that Internal Affairs in a police department, where
26 they're treated kind of hostilely? Does that happen with your
27 arm?

28 MR. O'BRIEN: Well, I think that I provide a lot of

1 anxiety when I arrive at a scene. But I think that my job as
2 Inspector General -- and recently, the last three days, I spent
3 on the road, going to various institutions in terms of
4 investigations.

5 A big part of this job is interpersonal
6 communications. I think that the less threatening, the less
7 imposing that me or representatives of my office are, the more
8 effective we are. And I think that I've seen that as a result
9 of my experience and exposures to the wardens in their meetings.
10 They've invited me to some of their quarterly meetings, their
11 monthly meetings. I've had an opportunity to brief them, to
12 give them some indications of some of the things that I sense or
13 that I'm finding. I'm finding a lot of agreement with them.

14 I suspect that as time goes by, again, going back to my
15 original statement, how well I'm going to be accepted is based
16 on the credibility of my work product.

17 CHAIRMAN LOCKYER: I note that there is a staff
18 discussion of a sexual harassment investigation that you were
19 responsible for conducting.

20 MR. O'BRIEN: Yes, sir.

21 CHAIRMAN LOCKYER: Could you maybe tell us what went on
22 in that instance?

23 MR. O'BRIEN: Well, there were two instances involving
24 the same individual.

25 Basically, I had received a complaint from another
26 manager about this individual's conduct, verbal conduct, in that
27 he was just crass. Upon receiving the information, I tried to
28 contact -- I contacted the females involved. They were very

1 reluctant to discuss the issue.

2 However, I brought the individual in. I spoke with
3 him, counselled him. He admitted his conduct. As a result of
4 that, I put a counseling notice in file.

5 Subsequently, about a year later, or a year-and-a-half
6 later, he was involved again with a report that I received that
7 he again had been crass and boorish. Most of it was verbal,
8 although there was some touching, and that type of situation.

9 Again, I contacted the females, who indicated that they
10 had not complained, but that they had merely been overheard
11 discussing some of his conduct.

12 It was my feeling, and I know it's the policy of the
13 Agency and the Department that when it comes to your attention,
14 you're required to do something about it, and I informed him
15 that I would do that.

16 I brought the offender, the manager, into my office. I
17 was aware of a lot of personal problems that he had, but that
18 did not mitigate the fact that I felt he had acted
19 inappropriately. He admitted having conducted himself
20 inappropriately. As a result of that, and his condition when I
21 was speaking with him, I made a judgement that he was in need of
22 some type of assistance more than just discipline.

23 I arranged to have him placed into the Employee
24 Assistance Program, which he agreed to, and I arranged the seven
25 counseling, and he went through that counseling session, and
26 successfully, because I monitored it and kept in contact with
27 the counselor.

28 At the end of that, I placed a formal what we call a

1 work improvement discussion, a formal reprimand in file, and
2 then I subsequently denied him the five percent merit pay
3 increase based on that incident.

4 To date, although I've been gone now from the CYA for
5 almost a year, to date I've heard nothing to indicate that what
6 he did was not successful, and we corrected the problem.
7 Hopefully, that will continue to be the case.

8 CHAIRMAN LOCKYER: Are there other inquiries from
9 Members? Senator.

10 SENATOR AYALA: I'd just like to ask Mr. O'Brien, are
11 you conducting currently any investigations or audits at this
12 point?

13 MR. O'BRIEN: We are beginning an audit. I've been in
14 conduct with CDC, Personnel and CYA. I'm about to enact an
15 extensive audit on the training program. Actually, it's more
16 than just the training of investigations. What I'm interested
17 in is how we select people to do investigative -- to do
18 investigations, what kind of training that they receive, and the
19 quality of the training, and the instructors who provide that.

20 And I'm also concerned about auditing the completed
21 investigations to see whether or not the training that they're
22 receiving is actually impacting the kinds of cases that we're
23 receiving in the various institutions. I've made a list of
24 about twenty areas that I'm very concerned about in terms of
25 emphasis, such as the interviewing and interrogation techniques,
26 the knowledge of the Police Officers Bill of Rights, and the
27 processing of how they interact with staff members.

28 I'm interested in crime scene protection and recording,

1 the knowledge of laws, as well as policies, procedures. All of
2 those things are being isolated, and we anticipate that we, if I
3 get the people on board to assist me, probably within the next
4 30 days we'll begin that audit.

5 SENATOR AYALA: Do any of these include sexual
6 harassment?

7 MR. O'BRIEN: Part of the audit will be -- it will
8 cover the EEOC investigations.

9 I understand that, to some degree in Corrections, some
10 of the investigations in the EEOC area are a little different
11 than the investigations conducted by Internal Affairs or the
12 institution. I'm concerned as to whether or not there should be
13 more emphasis on consistency in both areas.

14 We will be conducting an audit of discrimination,
15 harassment, retaliation, sexual harassment, those kinds of
16 investigations as well.

17 SENATOR AYALA: Thank you.

18 CHAIRMAN LOCKYER: All right, anything additional,
19 Senators.

20 Is anyone present who wishes to comment either for or
21 against confirmation.

22 Senator Beverly.

23 SENATOR BEVERLY: Move we recommend confirmation.

24 CHAIRMAN LOCKYER: All right, we have that motion.
25 Let's call the role.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator

1 Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Petris Aye. Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

6 CHAIRMAN LOCKYER: Aye.

7 SECRETARY WEBB: Lockyer Aye. Five to zero.

8 CHAIRMAN LOCKYER: Good luck, sir.

9 MR. O'BRIEN: Thank you very much, sir. Thank you.

10 [Later Senator Lewis voted to

11 confirm both nominations, making

12 the final vote on each 5-0.]

13 [Thereupon this portion of the

14 Senate Rules Committee hearing was

15 terminated at approximately 4:03 P.M.]

16 --ooOoo--

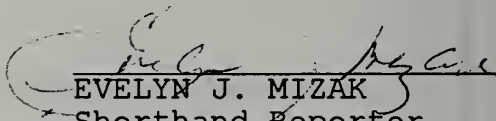
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SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

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PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DWIGHT HELMICK, Commissioner
California Highway Patrol

SENATOR QUENTIN KOPP

RON SNIDER, President
California Association of Highway Patrolmen

AL DAVILA, Lobbyist
California Association of Highway Patrolmen

JOSEPH P. MUNSO, Chief Deputy Director
Department of Health Services

TERRI THOMAS
California Association of Public Hospitals and Health Systems

DAVID A. ROHY, Member
State Energy Resources Conservation and Development Commission

BOB RAYMER, Technical Director
California Building Industry Association

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Senator Kopp, you want to introduce Mr. Helmick?

SENATOR KOPP: I do. Thank you, Mr. Chairman and Members.

I appear for two purposes. One, formally to present Mr. Helmick, Commissioner Helmick, commonly referred to as Spike, which I think is a term of affection rather than a pejorative. And to present him for recommendation for confirmation by the State Senate as Commissioner of the California Highway Patrol. And two, to provide a few comments in support of such a recommendation.

I've had the experience for eight years now of rather constant communication and association legislatively with the California Highway Patrol. And that covers Mr. Helmick's predecessor as well as him.

He has been acting in his chosen, and selected, and designated position as Commissioner now for going on three quarters of a year. That has provided ample time, as far as I'm personally concerned, to evaluate for myself his capability or lack of capability, his cooperation or noncooperation with the Legislature.

I'm here to testify that he is probably as cooperative a person as any Legislator would want to have the benefit of insofar as a state agency which falls within the legislative jurisdiction of a policy committee or a fiscal committee. He sets an example in that respect.

1 Secondly, he also enjoys the respect of people who, I
2 guess, in today's culture we call professionals in the field of
3 law enforcement with respect to California's highways and
4 interstate highways. And I think that's important because it
5 reflects the feeling of the people who are a part of the
6 Department, including primarily, of course, the sworn peace
7 officers who are the Highway Patrolmen and Highway Patrolwomen
8 of California.

9 He is experienced. His integrity has never been
10 questioned. And he understands the legislative process from one
11 of his prior assignments in the California Highway Patrol which
12 antedates my service in the Senate.

13 So, Mr. Chairman and Members, I come here with nothing
14 but the highest words of commendation for Mr. Helmick, and with
15 nothing but the most sincere and bona fide urging that he be
16 recommended to the full State Senate for confirmation.

17 And I thank you very much.

18 CHAIRMAN LOCKYER: There's a similar letter or comment
19 from Senator O'Connell which we'll add to the record.

20 SENATOR KOPP: May I be excused? Thank you.

21 CHAIRMAN LOCKYER: Did you want to start with any
22 opening comments?

23 MR. HELMICK: Senator, Mr. Chairman, thank you very
24 much. I think I'd almost like to stop and let Senator Kopp do
25 the talking for me, he was so eloquent and I do appreciate that.

26 If I might just very quickly give you just a little
27 overview of my experience, some of the things I believe that
28 make me qualified for the position.

1 First of all, I have been with the California Highway
2 Patrol for 26-and-a-half years, and soon will finish my 27th
3 year. Had a variety of assignments throughout the State of
4 California. Probably the most interesting and the one I learned
5 the most from was the nine years that I was privileged to spend
6 working before the California Legislature.

7 I have been blessed with a very strong management team
8 to work with. I have the gentlemen here today, if I could just
9 quickly introduce them. The Deputy Commissioner is Bill Kelvey,
10 and I have two Assistant Commissioners, one from Field
11 Operations, which is Bill Carlson, and Ted Star is from the
12 Staff Operation. With people like this, anyone, I think, can
13 succeed. They're dedicated professionals with well over a
14 hundred years' combined service to the state of California.

15 As to why I believe I am qualified, again, I believe I
16 have the formal education, be it the colleges, and the FBI
17 schools.

18 More importantly, I have a strong belief in the people
19 that work for California Highway Patrol. I'm proud of my
20 relationship with the California Association of Highway
21 Patrolmen. They're the men and women out there every single day
22 to do the job. I am proud of the rapport with the top
23 management individuals in this department. And I believe very
24 strongly in a team.

25 I also believe very strongly in working cooperatively
26 with this Legislature. My job is to enforce the law, not to try
27 to interpret it or make it. I can be here today to commit to
28 each and every one of you that I am willing any time, any place,

1 to sit down with you, and very responsive to your needs,
2 certainly would appreciate the support of this Committee.

3 I'd be obviously happy to answer any questions, too,
4 Senator, if that be your desire.

5 CHAIRMAN LOCKYER: Okay, let's inquire. Are there
6 questions from Members? Senator Ayala.

7 SENATOR AYALA: We've merged the State Police with the
8 Highway Patrol.

9 MR. HELMICK: Yes, sir.

10 SENATOR AYALA: I'm led to believe that would be a
11 tremendous savings to the taxpayers of California. How has that
12 worked out, okay? Is that working okay?

13 MR. HELMICK: Senator, I believe it's working very
14 well. We made a commitment to this California Legislature last
15 year that we would save \$850,000. We will save that amount of
16 money.

17 I think that's even more startling when you realize
18 that some of things that were supposed to happen last July did
19 not happen until later in the year. For example, permission to
20 sell a couple air craft that they wanted to sell. We've had a
21 couple contracts, one with Water Resources that has been
22 terminated. We were required to buy some automobiles which we
23 did not expect to buy.

24 But even with all of that, we completely retrained each
25 and every one of their people. And at the same token, we are
26 going to be able to meet our budget, what you, the Legislature,
27 told us to do.

28 I'm convinced that the people of the state will get

1 better service because of that training.

2 SENATOR AYALA: The rest of the savings will come from
3 attrition, when the State Police are retiring, and their
4 replacements will not be required?

5 MR. HELMICK: I think certainly there will be positions
6 that will not be needed to be filled.

7 More importantly, the citizens, and I'm referring to
8 the state employees of the state, now have the services of
9 roughly 7,000 people, before they had 200. And we're meeting
10 with all state departments and making it very clear that we are
11 ready to help try to enhance the safety of those employees.

12 SENATOR AYALA: Thank you.

13 CHAIRMAN LOCKYER: While we're on this particular
14 topic, I might just mention that I'm disappointed in the
15 consolidation. I think the operation is less sensitive than it
16 used to be to the Legislature, and muscled around more by the
17 Governor's Office than used to be the case. And also much more
18 political than used to be the case.

19 So, by way of public feedback, let me just tell you, if
20 it were up to me, I'd go back to the other system and undo
21 what's been done.

22 That has nothing to do with the costs, but just an
23 attitude that emanates from the consolidated operation with the
24 CHP as the lead.

25 Are there other questions that Members want to ask?
26 Senator Petris.

27 SENATOR PETRIS: I'm interested in the forfeiture
28 stuff. I didn't know the Highway Patrol got into it, but I

1 guess it's inevitable in view of some of the things you run
2 across, your people run across.

3 Do you know how many asset forfeiture cases the Patrol
4 was involved in last year?

5 MR. HELMICK: Senator, I do, and if I might just
6 quickly indicate that we are involved in 35 drug task forces.
7 We do have 26 drug dogs we're using, mainly work in our
8 facilities and with commercial vehicles.

9 To answer your question specifically, we were involved
10 in 76 asset forfeiture cases last year, having an estimated
11 value of about nine-and-a-half million dollars.

12 However, I think it's important to note that only about
13 four percent of that actually went through the courts and came
14 back to the Department, 387,000, for a couple different reasons.

15 We have a very rigid policy that in those cases that
16 our officers come upon, we call local law enforcement in to
17 assist, quite honestly, because most of them are in dire need
18 of money. And we have an obligation that we will not take more
19 than 25 percent of any seizure, and the rest will be returned to
20 local government to assist those local allied agencies.

21 Probably that number of 76 sounds somewhat small when
22 you consider that the California Highway Patrol was rated in the
23 nation number one on the taking away of heroin as well as
24 methamphetamines in the United States. So, we make a lot of
25 arrests.

26 We're very careful, and we have a very rigid policy
27 when we get involved in those asset seizures. I can assure you,
28 we arrest many, many more times than that 76, but our folks are

1 given some very rigid policy as to when they're to take the
2 vehicles used in the case.

3 SENATOR PETRIS: Are most of the forfeitures dealing
4 with vehicles only?

5 MR. HELMICK: The vast majority of them are only
6 vehicles, sir; that's correct.

7 SENATOR PETRIS: So, there isn't much involving, say,
8 real property, a house where some activities are going on there?

9 MR. HELMICK: No, Senator. In those rare cases when
10 done, it's usually a drug task force that we may have a member
11 on, but it's not the Department doing it. It's the task force.

12 Usually, those task forces are made up of a DEA agent,
13 or a Department of Justice agent, a local sheriff, local police,
14 and we usually just give one member at the request of the local
15 government to serve on it.

16 SENATOR PETRIS: Are those forfeitures pursuant to
17 either a judgement or a lawsuit that's pending, or are they done
18 in advance of any litigation?

19 MR. HELMICK: No, Senator. We take no forfeitures in
20 advance. We wait until clearly they've been adjudicated by the
21 court, the money's been adjudicated and given to this
22 Department. We do nothing in advance.

23 SENATOR PETRIS: I'm glad to hear that. In the past,
24 among other agencies, we've had a few problems of premature
25 seizures.

26 MR. HELMICK: That is correct.

27 SENATOR PETRIS: Thank you.

28 MR. HELMICK: Thank you.

1 CHAIRMAN LOCKYER: This probably reflects the
2 difference in policy between our Rules Committee and the
3 Assembly, but again, I know that you've recently had the
4 Assembly Sergeant of Arms train at the CHP Academy, including
5 fire arms training.

6 We do not arm Sergeants on this side of the building.
7 At least, that's our current policy.

8 Are you familiar with that?

9 MR. HELMICK: I am familiar with it. If I might
10 clarify, Senator, we have not did [sic] any training.

11 We have had the Assembly leadership come to this
12 Department and ask if we were able to train if they came an
13 asked us for the training.

14 CHAIRMAN LOCKYER: So it hasn't occurred yet.

15 MR. HELMICK: No, sir. And we have been very clear that
16 we do not get into those policies, and recommend very strongly
17 that they talk to their counterparts in this house. We would
18 simply be an arm via to do the training at our Academy if, in
19 fact, the Legislature asked us to.

20 We have not made any recommendations. We have publicly
21 stated we prefer them not to have weapons, if they were going to
22 ask us for our opinion.

23 CHAIRMAN LOCKYER: The computer systems in automobiles,
24 patrol cars, what's the current status of all of that?

25 MR. HELMICK: We continue -- we actually have two
26 projects, Senator. One of them is the ones in the cars. And
27 right now, the Legislature gave us money to complete our Los
28 Angeles installation, and that is working very well.

1 The project that's probably working even better is the
2 lap top computer program, where we actually have bought the lap
3 top computers, assigned them to officers. They do a much more
4 professional report quicker.

5 And inasmuch as we are mandated to get all of the
6 accident statistics from all local law enforcement, we have also
7 provided them with that program, computerized program, so the
8 reports come in in a time that's going to be much -- a more
9 costly [sic] manner of doing it, because we'll be able to gather
10 that data instead of doing it by actual people. We'll be able
11 to do it all by computer.

12 The program's working very well. We have in excess of
13 2,000 of those out now.

14 CHAIRMAN LOCKYER: How many units? What proportion of
15 all units is that?

16 MR. HELMICK: I would only be estimating, Senator. I
17 think it'd be well in the 50-60 percent. Most of the young
18 officers are very -- they like computers. It's a little
19 different for some of us older people, but they're very versed
20 in it.

21 CHAIRMAN LOCKYER: Since you're handy, let me just
22 mention, too, there's been some discussion of the State
23 Police-CHP space in the Capitol building. This is a place that
24 the intense competition for space is exceeded only by the Church
25 of the Holy Sepulcher in Jerusalem. And if there ever is any
26 opportunity to move some folks across the street or something,
27 there's a long list waiting for space to be freed up.

28 MR. HELMICK: If I might just mention, we are working

1 on that, and I think I've talked to your staff. Very much would
2 like to move them and consolidate them off site.

3 If I might just quickly on the comment you mentioned
4 earlier, hopefully I can meet with your staff, because your
5 concerns are bothersome to me, because that is absolutely not
6 where I want this organization to be. And I will assure you
7 that if that's how they're being perceived, we will do
8 everything in our power to reverse that perception.

9 CHAIRMAN LOCKYER: Well, this complaint is probably --
10 I don't know who it trickled up to, but just my own complaint is
11 waiting almost ten minutes at the gate because the Governor's
12 security unit had him in the garage. Of course, he hadn't been
13 there, and I happened to go to that garage.

14 I'm not a threat to Pete Wilson, and I don't expect any
15 bozo at the gate to hold the President of the Senate for ten
16 minutes.

17 MR. HELMICK: Nor do I, obviously, Senator.

18 CHAIRMAN LOCKYER: Anyone else?

19 SENATOR AYALA: One more question.

20 The number of units patrolling our freeways today as
21 compared to ten years ago, we're growing tremendously,
22 especially down in Southern California, have we kept up with the
23 growth in California?

24 MR. HELMICK: Senator, it's kind of a difficult --
25 depending on how you look at it, we were down in 1993. As you
26 recall, the Legislature and the Governor gave us 500 officers.
27 We are in a process of hiring those 500 officers. That will be
28 completed by June of 1997. The Academy is running on a

1 full-time basis.

2 So, I would say we are probably down still 75 to 100
3 positions where we should be. We have the authority, you've
4 been very kind in giving it to us, it's just getting them
5 through the Academy and out on to the roadway.

6 Unfortunately, we have anywhere from roughly 300 to 350
7 people a year retire. We've been trying to add the 500 on top
8 of it.

9 As I say, the Academy is going full strength. Our
10 classes used to be somewhere in the neighborhood of 80 officers,
11 and now in excess of 200 officers or candidates for per class.
12 So, we're doing everything in our power to get them out on the
13 road as quick as we can.

14 SENATOR AYALA: But the number of units are growing
15 along with the need?

16 MR. HELMICK: There has grown -- you'll probably
17 question whether it's growing as much as the need is, but
18 certainly they have grown, sir.

19 CHAIRMAN LOCKYER: Senator.

20 SENATOR PETRIS: When I drive up here from home, I
21 always look for the new signs so I'll know whether I'm on a 55
22 or 65 mile road.

23 What has been the effect of the increase? Is it too
24 early to tell? Have there been any problems have surfaced, like
25 more accidents or more arrests for speeding?

26 MR. HELMICK: Senator, a couple of interesting things
27 have occurred, and it probably is too early to make a firm view
28 on that, but we've been working with Senator Kopp's staff.

1 A couple things. The citations are down. I think
2 that's more of a factor than a lot of people now who are doing
3 the 65 to 70 or 75, where they felt comfortable, are now legal,
4 and they're not receiving citations. So, the citations for the
5 period since the new limits at the first of the year are down.
6 So that I'm excited about.

7 I must tell you, accidents are up, but they're not up
8 -- the speed accidents are not up. We've had some real terrible
9 accidents in the state where five, six, seven people were killed
10 in one vehicle, but it was not a factor of speed.

11 We had just one Friday night just the opposite. It was
12 a family that stalled and left their family sitting on the
13 freeway in Los Angeles, not moving at all, and a car came along
14 and hit them.

15 So, we continue to try to keep those accidents down,
16 but I can tell you, we have not seen a significant increase, or
17 any increase, caused on the speed limit change in the first
18 couple months of the year.

19 SENATOR PETRIS: Thank you.

20 CHAIRMAN LOCKYER: All right, anyone else present who
21 wants to comment either for or against the confirmation? Yes,
22 sir.

23 MR. SNIDER: Mr. Chairman, Senators, my name is Ron
24 Snider. I'm the President of the California Association of
25 Highway Patrolmen.

26 With me is Al Davilla.

27 MR. DAVILLA: Tell them who I am.

28 MR. SNIDER: I think everybody knows, Al, that's why.

1 The California Association of Highway Patrolmen
2 strongly supports Commissioner Helmick as the Commissioner of
3 the Highway Patrol. There's several reasons for this.

4 He started his career with the CHP as a beat officer,
5 and he understands what it's like to do the job, from any rank
6 in the Department.

7 California has experienced one emergency or crisis
8 after another during last several years, and Commissioner
9 Helmick has proven his leadership capabilities again and again.
10 Our officers respect Commissioner Helmick, and he has been a
11 positive impact on morale.

12 While the reputation of some other law enforcement
13 agencies have suffered in past several years, the reputation of
14 the CHP continues to prosper under the leadership of people like
15 Commissioner Helmick.

16 And the California Association of Highway Patrolmen do
17 not feel that you could find anybody that could do the job and
18 be more fit and capable of continuing the excellent job that has
19 been performed as the Commissioner of the Highway Patrol than
20 this gentleman here. We strongly support him.

21 CHAIRMAN LOCKYER: Al, do you want to add something?

22 MR. DAVILLA: Thank you, Mr. Chairman.

23 Senators, my job here was to introduce President Ron
24 Snider, but he proceeded me, so thank you very much. That's
25 all.

26 Except that I have known Spike since he was a traffic
27 officer, and I've never been impressed with anyone as much as I
28 have with him. We even worked together in the Legislature many

1 years ago when he first started. And we didn't always see eye
2 to eye in every case, but he was always available, and we could
3 talk to him, and he was very reasonable. I couldn't think of
4 anyone. We would be hard-pressed to find a man better qualified
5 than Spike.

6 We would urge your confirmation. Thank you.

7 CHAIRMAN LOCKYER: Thanks. Anyone else? Senator
8 Ayala.

9 SENATOR AYALA: I'm ready to move. I'd like to move
10 that Mr. Helmick be appointed Commissioner of the California
11 Highway Patrol.

12 CHAIRMAN LOCKYER: All right, we have a motion to
13 confirm. Call the roll.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Lewis.

17 SENATOR LEWIS: Aye.

18 SECRETARY WEBB: Lewis Aye. Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Petris Aye. Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

23 CHAIRMAN LOCKYER: Aye.

24 SECRETARY WEBB: Lockyer Aye. Five to zero.

25 CHAIRMAN LOCKYER: Thanks, Spike, good luck, and hope
26 things work out well. Keep up the good job.

27 MR. HELMICK: Thank you very much.

28 CHAIRMAN LOCKYER: We have Mr. Munso next.

1 Good afternoon. Did you want to start with any comment
2 at all?

3 MR. MUNSO: Yeah, I guess I'll just briefly -- I don't
4 have any certified introduction here. I'll just go through
5 briefly a little bit about myself and my experience for the
6 Committee.

7 Thank you, Mr. Chairman, Senators, for having the
8 opportunity to appear and consider my appointment for the
9 position of Chief Deputy Director of the Department of Health
10 Services.

11 I'm a native Californian, and I've been employed by the
12 state of California for over 24 years. I'm a dedicated and
13 committed public servant who believes in the importance of
14 dedicated service, both to the taxpayers and to the recipients
15 of governmental services.

16 Virtually my entire career has been spent in the Health
17 and Welfare arena in state government, where I've held a variety
18 of policy making positions. At the Department of Social
19 Services, I worked in a variety of administrative assignments
20 until my appointment as Special Assistant to the Chief Deputy
21 Director, where I represented the state with a variety of state,
22 federal, and local officials.

23 I went on to become the Chief of the Employment Program
24 Branch to implement the Greater Avenues for Independence
25 program, which is known as GAIN in the State of California, and
26 which is still in existence today.

27 After a brief assignment outside of the Health and
28 Welfare arena, I returned to become Chief of the Financial

1 Management Branch in the Department of Social Services, where I
2 represented the Department in both with state-local officials,
3 as well as the Legislature regarding the \$8 billion Social
4 Services budget.

5 Since 1991, I've been the Deputy Director of
6 Administration in the Department of Health Services, and now,
7 since May of 1995, Chief Deputy Director of the Department.

8 I have been part of the formulation of strategic and
9 long-term planning within the Department, and I've played a
10 strong role in supporting the administration's prevention agenda
11 and health programs.

12 I'm involved in moving the Medi-Cal program towards a
13 new delivery system, which will create the largest managed care
14 delivery system for Medicaid recipients in the nation.

15 I've also overseen the implementation of the teen
16 pregnancy prevention initiative contained in this year's budget,
17 as well as the rollout of the shelter-based domestic violence
18 program enacted a few years ago.

19 As Chief Deputy Director, I also have direct management
20 over public health services, primary care and family health,
21 medical care services, licensing and certification
22 responsibilities, as well as a full range of support services
23 for the Department.

24 Throughout my career, I have demonstrated the
25 willingness to work cooperatively with the Legislature and
26 constituency groups. I am a firm believer of open government.
27 It is my belief that the work of the Department of Health
28 Services is vital to the well being of all Californians, and I'm

1 proud to be a part of this organization.

2 Thank you for consideration of my appointment.

3 CHAIRMAN LOCKYER: Thank you.

4 Comments, questions.

5 SENATOR PETRIS: I'm interested in the birth defects
6 prevention program. I carried legislation on the Birth Defects
7 Prevention Act, something like that.

8 I notice that the resources allocated to that part of
9 the program have been reduced. Is that just a monetary fiscal
10 necessity, or is there some other reason?

11 MR. MUNSO: Actually, that was reduced back in 1992
12 during the tough fiscal times. We reduced some of the moneys
13 that we had allocated to the Public Health Foundation, who
14 provided some of the surveillance work for us out locally. At
15 the time, it was a matter of necessity.

16 That program has currently tried to get voluntary-like
17 kinds of service levels from various hospitals and other
18 entities out locally to try and supplant the information that we
19 believe was critical to ensure that California, who has the
20 leading edge in terms of really the only birth defects
21 monitoring in the country, that CDC monitored [sic] ours off
22 of, and so it still is viewed as the model in the nation today.
23 It's still viable, and it's still operational in the majority of
24 California.

25 SENATOR PETRIS: Is there much research still going on?

26 MR. MUNSO: There has been much research. Recently,
27 there was some research related to tobacco use, some research
28 related to clusters of birth defects in certain areas of

1 California.

2 That data base is used by a wide variety of people,
3 both nationally as well as within the UC system, to help assist
4 them in doing the research. It's the first kind of total global
5 data system for birth defects in the nation.

6 So, yes it's still being used for that purpose.

7 CHAIRMAN LOCKYER: Other questions?

8 Let me ask you about ADAP the AIDS Drug Assistance.

9 MR. MUNSO: Yes.

10 CHAIRMAN LOCKYER: I guess there's a financial
11 shortage.

12 MR. MUNSO: Uh-huh.

13 CHAIRMAN LOCKYER: How much is it, and what response
14 could we anticipate?

15 MR. MUNSO: We think currently the shortfall ranges
16 from anywhere between six to nine million dollars in the current
17 year. It's made up of a couple of --

18 CHAIRMAN LOCKYER: The current year.

19 MR. MUNSO: Current budget year.

20 It's made up of a couple things. One is just the
21 increased level of drug assistance programs locally that goes to
22 AIDS patients to maintain their prescriptions. The other is the
23 addition of a couple of new drugs that the FDA has recently
24 approved which are very expensive.

25 In prior years when the FDA had approved new therapies,
26 they were always in substitution of previous drugs that AIDS
27 patients took.

28 Now they're combination therapies, as they call it. In

1 some cases, is you're taking AZT, these drugs go on top of it.

2 CHAIRMAN LOCKYER: The cocktail.

3 MR. MUNSO: Yeah. They're experiencing -- so, we're
4 experiencing much larger growth than we ever had.

5 CHAIRMAN LOCKYER: Have those been added, then to the
6 formulary?

7 MR. MUNSO: They have been added to the formulary in
8 Medi-Cal.

9 CHAIRMAN LOCKYER: 3TC?

10 MR. MUNSO: 3TC and Siquinavir. They have been added
11 to the formulary in Medi-Cal, and the AIDS Drug Assistance
12 Program, which is kind of the state-only piece of it, we're in
13 the process of trying to figure out how we're going to make
14 those drugs available both in the current year and the budget
15 year. It's kind of a combination problem.

16 We will be submitting something shortly through the
17 administration to the Legislature in terms of our plan. There's
18 some ways to deal with some additional federal funds that are
19 coming down, some more aggressive rebates on drug manufacturers
20 who have been cooperative in terms of trying to get us more
21 rebates, and some other administrative things we can take. So,
22 the Legislature will be seeing probably a Section 28 request, or
23 something, in the near future.

24 And we've been working with large a constituency group,
25 task group, to also make recommendations to us. We had our
26 first meeting in early March to make recommendations to us, how
27 we can best look at this program in the future, because the
28 characteristics of this program are changing in that people

1 living longer, people are staying to the program longer. It's a
2 relatively rich program in terms of who we cover in terms of the
3 income levels. And there's a lot of good reasons for that.

4 CHAIRMAN LOCKYER: In terms of ADAP.

5 MR. MUNSO: Yes, in terms of ADAP.

6 CHAIRMAN LOCKYER: So, that's how you have this
7 Medi-Cal population that gets it?

8 MR. MUNSO: Right.

9 CHAIRMAN LOCKYER: What proportion would be Medi-Cal
10 versus the remainder?

11 MR. MUNSO: Right now it's about 60 percent are
12 Medi-Cal, 40 percent are ADAP. It's critical, though. To get
13 on Medi-Cal, you've had to really progress in the disease, and
14 we don't want that to happen. We have people who are on ADAP
15 right now who currently can work, can be productive, et cetera.

16 Once you're on Medi-Cal, that means you have really
17 passed the threshold of the disability system and Social
18 Security, so it's a good investment up front in terms of how to
19 do that. So, we're trying to figure out how to afford it.

20 CHAIRMAN LOCKYER: Is there more than one Chief Deputy
21 Director?

22 MR. MUNSO: In the -- prior, a couple years ago, there
23 were two chief deputies. Now there's just one.

24 CHAIRMAN LOCKYER: How many deputies?

25 MR. MUNSO: Deputies, there are -- I think there's
26 roughly around fifteen.

27 CHAIRMAN LOCKYER: How does it work?

28 MR. MUNSO: They all report through me to Director

1 Belshe.

2 CHAIRMAN LOCKYER: So, for the last almost a year, nine
3 months, whatever, that's what's been happening.

4 MR. MUNSO: That's what's been happening.

5 CHAIRMAN LOCKYER: What was the most difficult problem
6 you had to work with during that time?

7 MR. MUNSO: Gees, there's so many.

8 CHAIRMAN LOCKYER: What comes to mind?

9 MR. MUNSO: I think what comes to mind is always the
10 budget situation, and trying to have -- having one of the
11 largest budgets state government, people always come to us to
12 try and deal with solutions in terms of tough fiscal times, and
13 working those things out through the Legislature and through the
14 administration in terms of our budget, and trying to maintain
15 services to eligible populations.

16 I think one of the things we're proudest of is, we have
17 not cut eligibles from the Medi-Cal program during these tough
18 times.

19 I think some of the other trying times are always
20 those --

21 CHAIRMAN LOCKYER: Excuse me, but it was we that didn't
22 cut, not you. That is, the Governor proposed it numerous times.
23 We said no, but I understand. And I hope you feel like that's
24 what you would prefer in terms of your own policy perspectives.

25 Go ahead.

26 MR. MUNSO: In terms of -- I think the tough things are
27 the day-to-day surprises in the public health field that really
28 are broad-based population kinds of health issues with the

1 general public that we take very seriously, from the Hanta virus
2 to the E coli situations, to samonella issues with eggs.

3 I mean, there's a variety of tough issues that you have
4 to need no walk the line in terms of public health and what
5 makes sense.

6 CHAIRMAN LOCKYER: Where did Mr. Joseph go?

7 MR. MUNSO: Mr. Joseph is now the Executive Director
8 for the Board of Medical Quality Assurance, the Medical
9 Licensing Board.

10 CHAIRMAN LOCKYER: Other questions.

11 Is there anyone present who wants to comment either pro
12 or con?

13 MS. THOMAS: Mr. Chairman and Members, Terri Thomas on
14 behalf of the California Association of Public Hospitals and
15 Health Systems.

16 I'm here today in support of the nomination of Mr.
17 Munso as Chief Deputy Director.

18 I think that Mr. Munso alluded in his comments to one
19 of the reasons that we're here, and that was the phrase that he
20 used, open government.

21 Senator Lockyer, you also made reference to some of the
22 difficult budget situations that we faced over the past several
23 years.

24 These situations have been most trying for the public
25 hospital safety net system in California. As you can imagine,
26 we have not always seen eye to eye with this administration on
27 some of the proposals.

28 However, I have to emphasize that during the time that

1 Mr. Munso acted as the chief budget spokesperson for the
2 Department, until this very day, when he is acting as Chief
3 Deputy Director, he has never denied the members of my Board of
4 Directors an opportunity to discuss with him, very candidly and
5 openly, the problems that they are facing and potential
6 solutions to mitigate those problems.

7 I'm sure that he has not always welcomed the
8 opportunity to appear before our board. It's probably not
9 always been the most pleasant of situations, but he truly has
10 opened his office to us. And we do feel that he is a model in
11 this regard for public servants in California.

12 So, we are pleased to be here today to speak in support
13 of him.

14 CHAIRMAN LOCKYER: Is San Vicente Hospital in your
15 group?

16 MS. THOMAS: No, Senator, it's not. It's a private
17 hospital.

18 CHAIRMAN LOCKYER: That's how they could give \$50,000
19 to an Assembly candidate. They have too much money in that
20 proprietary hospital universe. I think we could take another
21 look and save some money.

22 Well, Senator Beverly.

23 SENATOR BEVERLY: I'm prepared to move we recommend
24 confirmation.

25 CHAIRMAN LOCKYER: We have motion to that effect.
26 Let's call the roll.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.

1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Five to zero.

10 CHAIRMAN LOCKYER: Good luck.

11 Mr. Rohy, good afternoon, sir. How are you today?

12 MR. ROHY: Except for being a bit nervous, Senator, I
13 feel fine.

14 CHAIRMAN LOCKYER: Take a deep breath.

15 I'm trying to figure out your business currently?

16 MR. ROHY: I'm a Commissioner with the California
17 Energy Commission.

18 CHAIRMAN LOCKYER: That's full-time since a year ago?

19 MR. ROHY: May of 1995, sir.

20 CHAIRMAN LOCKYER: Well, do you want to start with any
21 opening comments?

22 MR. ROHY: Yes, sir.

23 Thank you, Mr. Chairman and Senators. It's my pleasure
24 to appear here before you today to seek confirmation of my
25 position as Commissioner of the California Energy Commission.
26 As you're well aware, the Warren-Alquist Act requires that each
27 Commissioner have specific skills, and the position that I have
28 been appointed to requires that an engineer/scientist be put

1 into that position.

2 As way of background for that, those qualifications,
3 I'd like to say that I am a native Californian. I grew up in
4 Santa Barbara, went to the University of California at Santa
5 Barbara, where I received a degree in physics.

6 I did escape the state to do my graduate work in New
7 York for five years, which convinced me even more to come back
8 to California.

9 I did work at the California -- excuse me -- the
10 Lawrence Livermore Laboratory for about two-and-a-half years in
11 the late '60s, doing work on nuclear devices, as it's
12 euphemistically called.

13 Budget crisis --

14 CHAIRMAN LOCKYER: It's the bomb factory.

15 MR. ROHY: You're absolutely correct, sir.

16 CHAIRMAN LOCKYER: They won't tell me what critical
17 mass is now. When I learned, it was 22.5, but now it's tinier.
18 I don't want to get you in trouble.

19 MR. ROHY: We could talk about that privately.

20 CHAIRMAN LOCKYER: It's probably in some publication
21 somewhere, if I knew where to look.

22 MR. ROHY: I'm sure it is, on the Internet.

23 CHAIRMAN LOCKYER: Excuse me. Go ahead, sir.

24 MR. ROHY: Thank you.

25 But in 1970, when a severe budget crisis came along, it
26 was my opportunity to pursue a career in private industry, and I
27 went to Solar Turbines in San Diego, who, I believe, I think you
28 visited in the not too distant past.

1 CHAIRMAN LOCKYER: Yes, they're extraordinary.

2 MR. ROHY: There I was hired to do research and
3 instrumentation to help the efficiency and the emissions of
4 their gas turbine product line.

5 For the other Senators here who have not visited them,
6 they have nothing to do with solar energy. The name is purely
7 because the sun shines in San Diego, I believe. So, unless you
8 have questions about that, that's the reason.

9 At Solar Turbines, my work was primarily in engineering
10 and in science, and devoted towards reducing the emissions of
11 their product line. In many of the projects I worked in, we
12 reduced the emissions of their products by a factor of 10, from
13 a level of 200 down to about 25, to give you some idea.

14 At the same time, I was involved in efficiency
15 improvements in the introduction of technology, such as ceramic
16 technologies, which are, in fact, a new industry here in
17 California, so there're jobs involved there.

18 The culmination of my career at Solar was my last
19 position there, where I was the Director of Advanced Turbine
20 Systems, working on a public-private partnership, to work with
21 the U.S. Department of Energy. And in that position, we put a
22 proposal together to lower the emissions even more on their
23 product line, and to increase the efficiency considerably.

24 I'm proud to say that that proposal won, and there's a
25 private-public partnership now operating in San Diego, where
26 both sides, the private and public side, are putting in \$67
27 million, which is going into the -- a significant portion is
28 going into the California economy.

1 So, while I was at Solar, I was also involved in many
2 management issues, and I had some training at the MIT Sloan
3 School of Business on managing technological organizations. I
4 went to the Center for Creative Leadership in North Carolina, a
5 very fine institution.

6 CHAIRMAN LOCKYER: How long were you there?

7 MR. ROHY: That was a one-week program, Senator.

8 CHAIRMAN LOCKYER: It seemed worthwhile?

9 MR. ROHY: It was definitely worthwhile. It was -- I
10 went in with trepidation into the program. I was afraid of many
11 of the programs run by psychologists, being a physical scientist
12 myself. They handled it very professionally, and I thought
13 everyone who was serious about improving their management style
14 came out with an improvement path. That is not inexpensive,
15 though.

16 When the Governor's offer came along for the
17 appointment to this job, I had submitted the winning proposal.
18 I was at the point where I'm not ready to manage a large
19 project. I have done that in my life. I did not want to be the
20 program manager. So, this appointment was an appropriate
21 appointment.

22 I feel, therefore, that I do have the qualifications,
23 both in the science and engineering and management areas for
24 this very important job in the public sector, and I believe that
25 public service is something that every citizen should aspire to
26 at some point this their career.

27 As an Energy Commission, I feel my duty is to all
28 Californians, to take actions to assure safe, reliable energy

1 and the effective use of that energy that has the least impact
2 on our environment.

3 I've learned over the years that there's a lot to know
4 about both environmental and energy issues. I don't come here
5 saying I know it all, not nearly all of it. So, as part of my
6 job here, I feel that it is very important to listen to others,
7 and to look at the societal effects of what we're doing, and
8 blend those with the scientific facts that I think I bring to
9 the job.

10 During the ten months that I've been to the Commission,
11 I have taken the opportunity to visit several energy projects
12 within the state of California and talking to the local people
13 about what has worked, what hasn't worked. I visited the
14 Mariposa County Jail and looked at their energy projects, which
15 was a very enlightening process.

16 CHAIRMAN LOCKYER: What are they doing?

17 MR. ROHY: They built a three-and-a-half million dollar
18 jail, which to them is a very large project in their district.
19 And they decided up front to make it a very energy efficient
20 building and process, so they employed California Energy
21 Commission and private consultants when they designed the
22 building to minimize the use of energy and maximize the comfort
23 for the inmates and staff of the organization.

24 CHAIRMAN LOCKYER: How did they do it? What were the
25 basic ideas?

26 MR. ROHY: They used various insulation techniques.
27 They also had sky lighting in there. Some of the sky lighting
28 from natural lighting worked; some of it didn't.

1 They found out in one case where the sky light was
2 directly over a metal table that was bolted to the ground and
3 got so hot that no one could sit at it. Various small things
4 that are very important to them.

5 They had absorption chilling in the building, and
6 over-all, they designed it for minimum wall space, good
7 insulation.

8 And they have three people, I believe, in their own
9 public works staff. So, it is very important that it be
10 maintainable.

11 To me, examples like that are very important, because
12 those are the people that are making things happen in this
13 state, and working with those local people is a key part of the
14 job.

15 I would like to conclude with my current assignments at
16 the Commission. I am the presiding Commissioner on the 1996
17 Electricity Report. I'm presiding Commissioner on the Biannual
18 Energy Policy Report, which I think is one of the most critical
19 reports for state now.

20 I am also participating in the Efficiency Standards
21 Committee, the Conservation Committee, and the Siting and
22 Regulatory Affairs Committees.

23 As a part of my job, I am on the Board of Directors of
24 Safe Bidco, the state-chartered financial agency for small
25 business.

26 I thank you for this opportunity to present myself
27 before you today.

28 CHAIRMAN LOCKYER: Thank you.

1 Yes, sir.

2 SENATOR PETRIS: I have two or three areas I'm
3 interested in.

4 Your reference to ceramics [could you tell us|caught]
5 my attention. Is that like the nose cone in the rockets that
6 come back from space? What's the use of ceramics?

7 MR. ROHY: They're very similar to those materials,
8 Senator.

9 They're used, however, in the gas turbine engine in the
10 combustor liner, and in the nozzle section, and other parts that
11 rotate in the hot gas flow of the gas turbine engine.

12 SENATOR PETRIS: Like an insulator?

13 MR. ROHY: In this case, they're actually a structural
14 material. They replace what is today a metal material that's
15 highly cooled with air. That air is very expensive from an
16 efficiency point of view to produce. So, the ceramic component
17 replaces -- an uncooled ceramic component replaces a metal part
18 that has had to be cooled in the past. So, it increases the
19 efficiency of the product.

20 SENATOR PETRIS: How long has that been in use?

21 MR. ROHY: They are just going through testing at Solar
22 Turbines. A company in Arizona has some that are actually
23 flying in auxiliary power units today, so it is --

24 SENATOR PETRIS: Just starting.

25 MR. ROHY: -- just starting, sir.

26 SENATOR PETRIS: You know, we went through a period of
27 conservation, a very big program throughout the state, beginning
28 with the state government, conservation of energy. And there

1 was a word for it which I don't remember, re- something or
2 other. Can you help me out?

3 MR. ROHY: I apologize, I cannot.

4 SENATOR PETRIS: I apologize. I should know it because
5 we used the term a lot here in the beginning of the energy
6 savings. I'm trying to restore my knowledge. Usually I'm
7 trying to broaden it; now I'm trying to restore it. It's not
8 working.

9 Can anybody help me out?

10 MR. ROHY: Somebody in the audience said demand side
11 management.

12 CHAIRMAN LOCKYER: Sorry, flunked. Come back next
13 year.

14 MR. ROHY: That was the key question?

15 CHAIRMAN LOCKYER: That was it. We all flunked, too.

16 SENATOR PETRIS: Including the one who asked the
17 question.

18 Thank you.

19 CHAIRMAN LOCKYER: There's a suggestion that as we
20 enter this new phase of market competition in our energy rather
21 than the traditional roles, that maybe the functions of the
22 Energy Commission and the PUC need to be re-examined.

23 Have you had an opportunity to think at all about that
24 institutional environment, and what changes, if any, you'd
25 suggest?

26 MR. ROHY: Mr. Chairman, I have thought about it. I
27 certainly am not an expert at this point, though, so I don't
28 have the complete answer for you today.

1 Let me suggest that there are differences between the
2 two organizations in how they act. My observations are that the
3 California Public Utilities Commission is an agency that focuses
4 on the regulation of investor-owned utilities, and regulation is
5 a key part of their corporate culture, if I could use that
6 generic term.

7 Whereas, the California Energy Commission, while we
8 have regulatory -- approvals and regulatory duties, we do other
9 things, such as conservation program for the State of
10 California. We work on research and development. So, that
11 creates a different culture within the organizations.

12 I have thought about how those cultures could be
13 blended, and I do not have an answer for that. I think that's
14 something that should be done very carefully.

15 The reason I say that, as we go through restructuring
16 of the electric utility industry, I believe it is imperative
17 that all of us create an atmosphere of stability here in this
18 government organization, so that the industry that is trying to
19 restructure knows that there is a certain path that they can
20 have a foundation for going on. We want to make sure that we
21 have a reliable and safe power system in the future.

22 So, my only advice or suggestions would be that we go
23 carefully as we go ahead and not take -- chew the entire apple
24 in one bite. That it is something that must be considered step
25 by step as we go ahead.

26 CHAIRMAN LOCKYER: There's been debate, I guess, before
27 both Air Resources and the Energy Commission on fuel policy.
28 The most recent one, I think, is ethanol v. methanol. Have

1 you been involved this those discussions at all?

2 MR. ROHY: No, sir, I have not been involved.

3 CHAIRMAN LOCKYER: Maybe it was ARB that was doing it.

4 Other questions?

5 Anyone present who wishes to comment?

6 MR. RAYMER: Thank you, Mr. Chairman, Committee
7 Members.

8 I'm Bob Raymer, Technical Director with the California
9 Building Industry Association.

10 I've represented the California home builders before
11 the Energy Commission and the Public Utilities Commission for
12 the last 14 years. So, I've had a good chance to see how both
13 agencies work, and interact, and sometimes don't interact.

14 I must say, over last year-and-a-half to two years, the
15 Energy Commission has embarked on a very service-oriented type
16 of an approach in dealing with the private sector.

17 A case in point, in the last six months, the CEC has
18 joined with the private sector, the building industry and a few
19 other groups, in procuring funding from the federal government
20 to embark on a rather ambitious training and education program
21 of our own membership.

22 This is helping us substantially with the construction
23 defect problem, the point being, noncompliance with the code
24 today is effectively a construction defect five or six years
25 down the road. By getting out there and training our foremen on
26 the site, our site superintendents, our product purchasers,
27 we're effectively contacting the people who have not been
28 trained or educated on these standards at all for the last

1 decade. This is completely unprecedented.

2 Other states are beginning to look at the immediate
3 success that we're already seeing happen in California.

4 The other case in point is, rather than focusing on
5 continually tightening the standards which have been tightened
6 five times in the last 13 years, this effort to focus on
7 implementation and education is now helping the consumer realize
8 the benefits. After all, if the building officials do not
9 understand the regulations, if the builders and the architects
10 don't understand the regulations, whatever's on the paper is
11 irrelevant. It's simply paper savings. By getting out there in
12 the field and actually helping us comply, it's really proving
13 benefit already.

14 With that, thank you very much.

15 CHAIRMAN LOCKYER: Thank you.

16 Senator Beverly.

17 SENATOR BEVERLY: Move we recommend confirmation.

18 CHAIRMAN LOCKYER: What a reliable motion. Call the
19 roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Lewis.

23 SENATOR LEWIS: Aye.

24 SECRETARY WEBB: Lewis Aye. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye. Senator Beverly.

27 SENATOR BEVERLY: Aye.

28 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Lockyer Aye. Five to zero.

3 CHAIRMAN LOCKYER: Good luck.

4 MR. ROHY: Thank you, sir.

5 [Thereupon. This portion of the
6 Senate Rules Committee hearing was
7 terminated at approximately 3:10 P.M.]

8 --ooOoo--
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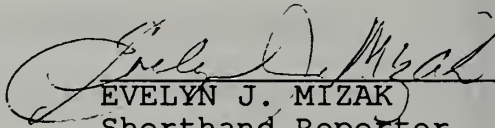
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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SENATOR WILLIAM LOCKYER, Chair
SENATOR ROBERT BEVERLY, Vice Chair
SENATOR RUBEN AYALA
SENATOR JOHN LEWIS
SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

P.G. CONLON, Member
California Transportation Commission
SENATOR QUENTIN KOPP
HUGH HEWITT, Member
South Coast Air Quality Management District Board
JOHN WHITE
Sierra Club
MARK ABRAMOWITZ, President
Community Environmental Services
GARY PATTON, General Counsel
Planning and Conservation League
JOHN MCCAULL, California Legislative Director
National Audubon Society
ANN M. VENEMAN, Secretary
Department of Food and Agriculture
PETER G. STAMISON, Director
Department of General Services
ALLEN AMARO
Disabled Veterans Business Enterprise Network
PAUL GUERRERO
UMBE

1 STEVE OLSEN, Chief Deputy
2 Department of General Services

3 DONALD PARKS, President and CEO
4 Information Systems Services
Applied Technology, Inc.

5 ALLEN DAVENPORT
6 Service Employees International Union

7 Eppie Johnson, President and Founder
Eppie's Restaurants

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Confirmations, first is Mr. Conlon.
Good afternoon, sir.

MR. CONLON: Good afternoon.

CHAIRMAN LOCKYER: Senator Kopp, do you want to begin?

SENATOR KOPP: Yes.

Mr. Chairman and Members of the Committee, I appear to
present Mr. Conlon to the Committee for recommended confirmation
as a member of the California Transportation Commission.

I've known him since he was appointed to the Public
Utilities Commission. I have been engaged in activity with him
since he has been appointed a member of the California
Transportation Commission.

He has practiced as a certified public accountant with
Arthur Andersen for approximately 30 years with honor and with
rectitude. He is the only certified public accountant on the
Commission, which is an advantage, in my strong opinion, because
so much of the work of CTC involves rather complicated
transportation financing and transportation financial
allocations between the various branches of government and
levels of government in California.

He's acutely and keenly interested in the work of the
Commission.

As you know, the Commission has been serving, or the
members have been serving during a particularly difficult time
in the last couple of years in which the expectations of the
Transportation Blueprint in 1989 did not mature, did not

1 eventuate. Difficult decisions have been compelled, and Mr.
2 Conlon has applied himself directly in what I guess popularly
3 today is known as a hands-on method of ascertaining and
4 identifying issues and making decisions thereon.

5 I recommend him without reservation to you,
6 Mr. Chairman.

7 CHAIRMAN LOCKYER: Did you notice any particular one
8 that you thought was changed or implemented as a consequence of
9 his hands-on involvement?

10 SENATOR KOPP: I think that he has been a sturdy
11 exponent of transit, and the place of public transit in
12 California's transportation structure. He's been singular in
13 that respect, certainly.

14 We had the pleasure of each other's company a couple
15 weeks ago involving inspection of state and county highway
16 facilities on the Mexican border. That doesn't involve public
17 transit, but I can certainly represent to the Committee that he
18 is conscientiously interested in fostering public transit.

19 Thank you.

20 CHAIRMAN LOCKYER: Thank you, Senator.

21 Commissioner, do you want to comment at all in any way?
22 Do you have an opening statement?

23 MR. CONLON: I have an opening statement, but I think,
24 maybe in the interest of time, maybe I could pass it out to you
25 and just summarize it very briefly, if you'd prefer.

26 CHAIRMAN LOCKYER: Okay.

27 MR. CONLON: I think that Senator has been gracious
28 enough to cover most of my credentials. I think my 30-year

1 career with Arthur Andersen as a CPA certainly should help both
2 the Transportation Commission and has helped on the PUC.

3 I'm certainly honored to be appointed to this position,
4 and I believe that my experience will be very helpful at the
5 CTC, and the interrelationship between PUC and the CTC.

6 The PUC today has many responsibilities in regard to
7 rail, which are also involved at the CTC. And I think that on
8 our rail endeavors at the PUC, we get involved in the rate
9 separations. We've gotten involved in North Coast railroad.
10 We're involved in the Alameda rail corridor.

11 One of the Commissioners, Dan Fessler, is on the High
12 Speed Rail Commission. We're actively involved in representing
13 the state in the Southern Pacific-Union Pacific merger.

14 We have primary responsibility for the transit
15 districts as far as safety is concerned. And as Senator
16 mentioned on NAFTA, we're certainly working with the NAFTA
17 Implementation Committee, and working with the related parties
18 on insurance and safety of these trucks coming across the border
19 when that begins in the near future.

20 I think the other experience that I've had that may be
21 germane from the public interest standpoint work is some of the
22 work that I've done in the public sector as far as nonprofits
23 are concerned. And as I indicated in the my bio, I worked with
24 self-help for the elderly for ten years, which is a senior
25 citizens agency in Chinatown that built a public housing project
26 some years ago.

27 I'm presently on the Industry Education Council, where
28 we're continuing to try and help transition from high school to

1 jobs, public education. And after my early retirement from
2 Arthur Andersen, I spent almost two years with the Alameda
3 Unified School District in helping them create their vision for
4 education and their definition of the ideal graduate.

5 I think those are three of the various things that I
6 had done in the civic responsibility when I was with Arthur
7 Andersen or immediately thereafter.

8 I believe that my professional experience, my
9 experience at the PUC, and my civic work that I've done
10 certainly give me the qualifications to be a good Commissioner
11 at the California Transportation Commission.

12 So, I think that summarizes my comments, and I have
13 Superintendent Dennis Chaconis here today if you'd like to spend
14 a minute or two on the work that we did at the Alameda Unified
15 School District.

16 CHAIRMAN LOCKYER: Let me find out from Members,
17 especially the Senator that represents Alameda, I had heard
18 during a meeting last year with, I believe, it's Mr. Kelly from
19 Arthur Andersen?

20 MR. CONLON: Yes, Tom Kelly.

21 CHAIRMAN LOCKYER: How enthusiastic the firm's
22 commitment is to helping with Alameda's planning and program.
23 So, I was pleased to hear about private sector involvements of
24 that sort.

25 I guess for you, it was once you retired.

26 MR. CONLON: I was on a consulting arrangement for two
27 years to work half-time with the city and the school district.

28 CHAIRMAN LOCKYER: Are there questions? Let's get

1 those first, Senator Petris.

2 SENATOR PETRIS: The question I have is on serving in
3 both capacities.

4 CHAIRMAN LOCKYER: The law does that.

5 SENATOR PETRIS: The law permits it or requires it?

6 CHAIRMAN LOCKYER: Requires.

7 SENATOR PETRIS: That answers my question.

8 CHAIRMAN LOCKYER: That is, there is a member of the
9 PUC who serves on the CTC.

10 SENATOR BEVERLY: He's replacing Mr. Fessler.

11 MR. CONLON: Yes, on the CTC.

12 CHAIRMAN LOCKYER: Anything else Senator? Senator
13 Ayala.

14 SENATOR AYALA: Yes, Mr. Conlon, we just passed a \$2
15 million bond issue? Is it \$2 million or \$2 billion?

16 MR. CONLON: Two billion.

17 SENATOR AYALA: For the seismic retrofitting.

18 We have a four-and-a-half billion dollar shortfall in
19 STIP.

20 Do you think we have sufficient funds now to at least
21 keep up with the problems needed in our state highways,
22 maintenance, so forth?

23 MR. CONLON: That requires a lot of analysis, but
24 certainly the state is much better off since that proposition
25 has passed. I think the dire consequences of that proposition
26 not passing would have been very bad for the state.

27 I think now that it's passed, those funds will be
28 available to do all the retrofitting on the nontoll bridges and

1 certainly a significant portion of the toll bridges, so I think
2 that the money will be well spent, and it should help us in our
3 next STIP program, which will be in '98, probably not cut back
4 like we had to do this year many of the projects in the state,
5 or we will have to. We'll vote on that later this month.

6 SENATOR AYALA: You prefer a bond issue to finance our
7 highways as opposed to a sales tax on gasoline?

8 MR. CONLON: Well --

9 SENATOR AYALA: If so, why?

10 MR. CONLON: I think the future issues of
11 transportation in the state are very significant. Once we get
12 the bridges taken care of, I think the highways still are behind
13 on their rehabilitation, rehab. There's now about a third of
14 the state's highways need to be rehabilitated. In our current
15 STIP, we've accelerated the amount of money to that program, and
16 as a result, at the end of this year, at the end of the current
17 STIP program, we will have reduced the highways that are in
18 disrepair from 15,000 miles down to 10,000 miles.

19 So, I think we need to accelerate that program if we
20 possibly can, and I think that any vehicle that the Legislature
21 can work with the Governor's Office, can work with the Caltrans
22 and work with us, to get the funds necessary to do that, we are
23 supportive of. So, I don't think there's any one --

24 SENATOR AYALA: You prefer the bond issue financing as
25 opposed to sales tax.

26 MR. CONLON: I think that really is a difficult issue
27 for one commissioner to express. I think the Legislature and
28 the Governor's Office has to make the first commitment as to

1 where these funds should come from. And then, we can be
2 supportive in allocating those funds and prioritize the projects
3 that they go to.

4 We were supportive of the bond issue. The CTC did pass
5 a resolution supporting the legislation which enacted the bond
6 issue. So, I do want to say that the Commission was supportive
7 of the bond issue.

8 SENATOR AYALA: The reason I'm asking is because the
9 San Francisco earthquake problem we had there, we had a sales
10 tax to repair those highways, and so forth, in San Francisco.
11 Within two years, they were paid for, and the sales tax came
12 off.

13 A bond issue, we go 40 years to amortize it. People
14 who're not even born today will be paying for it. I know that
15 Republicans hate the word tax, but we have to be a little bit
16 concerned with the people that will be paying for this bond issue
17 don't even know where Northridge is, by the way, in case of the
18 bond issue we just approved.

19 So, I don't understand the reluctance on the part of
20 people to put a tax, like we did in San Francisco, to get the
21 job done. And it's off within three or four years, as opposed
22 to 40 years of paying for a bond issue, where you pay twice as
23 much as the bond issue's worth through interest. I don't
24 understand that financing at all.

25 MR. CONLON: I guess the fact that the voters passed it
26 is very encouraging. I think that we at the Commission were not
27 optimistic that the voters would want to step up and do that
28 type of financing for the very reasons that you just mentioned.

1 So, the fact that they did it, I think, is encouraging both for
2 the schools and the highways. So --

3 SENATOR AYALA: But the voters had no choice. It's the
4 only ballpark in town.

5 MR. CONLON: Well, they could have rejected it.

6 SENATOR AYALA: They didn't have, do you want a bond
7 issue or sales tax, either that or none. They would have
8 supported a sales tax as well, I think.

9 MR. CONLON: Well, they turned it down in '90 and '92,
10 and we were counting on -- I wasn't on the Commission, but my
11 understanding is that the plan that was adopted in '89
12 envisioned passing bond programs in '92 to '94, to get the full
13 program implemented that was designed in '89, and we still don't
14 have that accomplished.

15 We do have the one, and we're grateful for the one.
16 And I really don't think, Senator, that I can categorically say
17 that one method is preferred. I think our needs are so great
18 that all methods have to be considered.

19 And I really think it's a tough decision for you and
20 Governor's Office to make, work out in the budget, and then we
21 at the Commission will decide which projects get chosen and what
22 priorities.

23 SENATOR AYALA: Thank you.

24 CHAIRMAN LOCKYER: Obviously, there will be legislative
25 and budget events that will affect what moneys are available for
26 what kinds of projects.

27 I guess one of the frustrations that someone should
28 mention, and it maybe more germane to what you can do in an

1 administrative leadership role at CTC, is that it makes it
2 difficult for us when Caltrans generates a list of estimated
3 costs associated with major projects, and then the reality turns
4 out to be very different from that.

5 So, for example, with respect to the toll bridge
6 retrofit, the estimate was \$650 million. Well, now we're told
7 it's closer to \$2 billion. It's hard to understand being more
8 than 300 percent wrong in these estimates.

9 And so, to the extent that you have an opportunity to
10 involve yourselves in the staff work that's conducted of that
11 sort -- it's not legislative, really, or even the budget -- it
12 might be helpful to discipline their forecasting in that
13 context.

14 MR. CONLON: Well, I think our Ex-Chair, who is now the
15 Under-Secretary over there, that's one of his strong objectives,
16 I believe. So, I think that will get attention, and I'll
17 certainly do everything in my four years to see that we can get
18 better estimates that are more realistic up front.

19 CHAIRMAN LOCKYER: Mr. Superintendent, I don't think
20 it's necessary to have you come up now. Just hello.

21 MR. CONLON: I'll leave it up to you, Senator.

22 CHAIRMAN LOCKYER: I don't think you need to, but let
23 me ask what the pleasure of the Committee may be.

24 SENATOR AYALA: I'll move.

25 CHAIRMAN LOCKYER: We have a motion by Senator Ayala.
26 Call the roll.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.

1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Five to zero.

10 CHAIRMAN LOCKYER: Thank you. Keep up the good work.

11 MR. CONLON: Thank you very much. Appreciate your
12 support.

13 CHAIRMAN LOCKYER: Mr. Hewitt is next, South Coast Air
14 Quality Board. I need to excuse myself for about five minutes.

15 SENATOR BEVERLY: Mr. Hewitt, do you have an opening
16 statement or remarks you'd like to make?

17 MR. HEWITT: Thank you, Senator.

18 Just very briefly, I had hoped to be introduced today
19 by Senator Hayden. Senator Hayden has been called away to San
20 Francisco.

21 Senator Hayden has become a friend of mine over the
22 five or six years, as I have interviewed him on a half dozen
23 occasions, and we've come to respect each other for our various
24 intellectual positions, though we often do not agree on
25 anything. We become alarmed, in fact, when we are increasingly
26 agreeing.

27 SENATOR BEVERLY: Let me clarify, Haynes or Hayden?

28 MR. HEWITT: Hayden, yes, sir. I'm not surprised you

1 heard me wrong there.

2 The reason I asked Tom to come was because we have
3 developed for each other this respect for intellectual positions
4 that are independently adopted and defended with a great deal of
5 civility but yet passion.

6 And that is what has marked my tenure on the Air
7 Quality Management District, and in which I want to limit my
8 remarks to one bill in particular. The only controversial bill,
9 in fact, that has before -- or rule that has come before the
10 AQMD in my year on the Board, and that is 2202.

11 Rule 2202 was adopted in December of last year over my
12 opposition and the opposition of two other Board members because
13 we saw in it a blatant attempt by the Board and the staff to
14 overrule the will of this body.

15 Senator Lewis and Senator Hurtt had both sponsored, and
16 this Senate had passed, and the Assembly had agreed, and the
17 Governor had signed, two pieces of legislation that had repealed
18 ride sharing mandates. The Federal Congress had also moved in
19 that direction, was on the eve of passing another similar
20 repeal.

21 At that point, I and the other two Board members
22 believed it was simply improper for the AQMD to take the
23 position that the will of the Senate and the will of the
24 Assembly and the will of the Governor did not bind the AQMD, and
25 to put together a rule, 2202, that had the effect of leaving
26 ride sharing in place.

27 It is for that reason there has been some controversy
28 in the last year, but that was the only reason. I believe it is

1 probably one of those problems that attends the development of
2 an agency, that, when it goes through an adolescent period --
3 it's 20 years old -- that it begins to resent very much the
4 governance of the body that brought it into being, in this
5 instance, the Senate and the Legislature of California.

6 That being said, and my only criticism of my year on
7 the Board being that rule, I'd also like to compliment the staff
8 there for being fine professionals in the area of science, and
9 to recommend continued support for the district's efforts in the
10 area where it is most productive, which is high research in the
11 areas of technology.

12 That having been said, my colleagues in the press are
13 grumbling about the length of this hearing. God knows, we don't
14 want to get them upset, so I'll leave it at that.

15 SENATOR BEVERLY: Any questions from Members of the
16 Committee? Senator Lewis.

17 SENATOR LEWIS: Mr. Hewitt, first of all, I want to
18 thank you for being one of the three members of the
19 twelve-member board that defended the actions of the
20 Legislature.

21 I personally took a great offense that nine members of
22 the twelve-member board ran rough-shod over my legislation and
23 the will of the Legislature. My bill passed the Senate, I
24 think, on a 28 to 8 vote, rather overwhelmingly. It was signed
25 into law.

26 I was wondering if you could, given the fact that these
27 kind of ride sharing programs have proven to be so ineffective
28 compared to other strategies to try to combat smog in the Basin,

1 or other parts of the state, why is it that nine members of the
2 South Coast district would so willingly violate the intent of
3 the law in pursuit of a strategy that's failed?

4 MR. HEWITT: Well, Senator, I won't speak for what my
5 colleagues did. They made some statements at the time.

6 I will note that among the testimony received by the
7 Board during that very prolonged controversy was the testimony
8 of two groups. One, large businesses that had adopted a ride
9 sharing program into their labor contracts, who argued that they
10 would suffer a loss of esteem and ability to deal with their
11 organized labor if, in fact, they were obliged to abandon ride
12 sharing.

13 That was persuasive to a certain extent for some of our
14 members, but it did not override our concern that, in fact, the
15 Legislature had still taken this away from us.

16 There is also a lobby of people who have organized
17 themselves to benefit from the institution of ride sharing.
18 These are the individuals who teach ride sharing, who promote
19 ride sharing, and who have a little cottage industry built up
20 about ride sharing. They're very upset about the fact that this
21 Legislature had moved to take ride sharing away.

22 That having been said, 2202 is not a bad rule. It's
23 actually a pretty good rule, except for the inclusion of ride
24 sharing in it. I would vote for it again, and hope to have been
25 able to vote for it the first time, had it been limited to all
26 of the other alternatives, except ride sharing.

27 But it was clear to me that once the Senate and the
28 Legislature said no ride sharing, that we ought to have

1 respected the will of this body, and to have done so fairly
2 routinely.

3 So, I won't put words in the mouths of my other nine
4 colleagues, but it was not a decision that was hard for me. I
5 am used to the idea that Legislatures legislate, and
6 administrative agencies simply follow the rules they are given.

7 SENATOR LEWIS: Sounds like you and I might have a
8 fundamental disagreement on 2202, because that would put you on
9 line of supporting a direct source regulation.

10 MR. HEWITT: We do have some disagreement there,
11 Senator. There are some abilities to support indirect sources
12 to the extent that stationaries cannot account for the necessary
13 inventory reduction that we need over the next four years.

14 SENATOR LEWIS: Do you think it's right or justifiable
15 that employers in the South Coast Basin that have no
16 relationship to smog, other than the fact that some of their
17 employees might drive to work, should be required to engage in
18 these kind of programs?

19 MR. HEWITT: Only to the extent that it prevents the
20 EPA from imposing regulatory sanctions that are more serious
21 and more onerous than those which are already in place.

22 The EPA would not limit itself to employ sanctions.
23 They would shoot for those same employers.

24 So, I look for least of the evils, and 2202 could have
25 some ways to keep down the evils, but ride sharing is not one of
26 them.

27 SENATOR LEWIS: So, whereas, I might take the approach
28 of wanting to tell EPA to stick it, you might take a more

1 moderate and temperate approach?

2 MR. HEWITT: Yes, Senator, but I'd also recapture the
3 original point by saying, whatever this body and the Assembly
4 told us to do is what I would implement.

5 SENATOR BEVERLY: Any further questions by any Member
6 of the Committee. Senator Ayala.

7 SENATOR AYALA: Mr. Hewitt, I have a whole folder full
8 of opposition, letters of opposition. We discussed one in my
9 office.

10 Did you ever get ahold of those folks?

11 MR. HEWITT: Senator, I did call, and I had a very
12 interesting reaction from the local AFL-CIO. They did not know
13 who I was, which was very upsetting to me, since I'm on
14 television five nights a week, and they're not watching PBS.

15 I don't have any idea what that's about. I did try,
16 Senator.

17 SENATOR AYALA: Do you believe that the air pollution
18 in Southern California, where a lot of us reside, is one of the
19 worst polluted areas, air pollution problems, in the country,
20 according to the Congress? Do you believe that?

21 MR. HEWITT: Absolutely. If you combine the air
22 pollution of the five next largest metropolitan districts, they
23 would not equal that of the Los Angeles Basin.

24 SENATOR AYALA: Again, basing my questions on the
25 letters, and there are a multitude of reasons why they're
26 opposing you. You said that Senator Hayden supports you?

27 MR. HEWITT: Senator Hayden had agreed to introduce me,
28 Senator Ayala. I do not know what he was going to say. Tom and

1 I get along.

2 I have a lot of friends on the Democratic side. Bill
3 Press is an old and good colleague of mine, with whom I've
4 debated these issues for years in good spirit. From the
5 environmental community of Michael Bean, who's the Environmental
6 Defense Fund. Joel Reynolds of the Natural Resources Defense
7 Council.

8 We don't often agree on anything, but we do so civilly,
9 and with respect for each other's well thought out opinions.

10 SENATOR AYALA: It confuses me, because the Chairman of
11 your Board is from my area, and he says that legislation that
12 you're supporting is state legislative imperialism because it's
13 a direct attack on local governments. And this is your
14 colleague on the Board, your Chairman.

15 How do you respond to that?

16 MR. HEWITT: Well, Jon and I have had a lot of
17 conversations about 2202. If he and I were to think
18 prospectively about bills, we might agree, Senator, about ones
19 that are pending in the chamber. But once the chamber has
20 passed, and the Assembly has agreed, and the Governor has
21 signed, I depart from Chairman Mikels in this opinion.

22 It is not Up to the AQMD's Board to disagree with what
23 this group has done and the Governor has signed into law.

24 It is our job to implement, because we do not make the
25 laws of California. We're merely an administrative agency;
26 we're birthed by this.

27 If you tell us how high to jump, we jump. If you tell
28 us to wear purple uniforms, we wear purple uniforms. And if you

1 tell us to abolish ride sharing, we ought to abolish ride
2 sharing.

3 SENATOR AYALA: I represent the dairy area, and the
4 Mayor of Los Angeles wanted to transfer the responsibility over
5 to the area that I represent, when 85 percent of the pollution
6 is intrusion from the west, Orange and L.A. County. He refused
7 to admit that. He thinks that the dairies are causing the
8 problems, not so much as the automobiles in downtown Los
9 Angeles.

10 What is your position on that?

11 MR. CONLON: Luckily, we have some scientific studies
12 now, Senator. Where Mayor Riorden thought that between 30 and
13 40 tons of ammonia a day was being emitted by the 300,000 heads
14 of cattle in your district, in fact, it turns out to be about 7
15 tons a day.

16 Given the fact that dairy has been on a declining road,
17 it would not be a priority of me if I continue on the Board. I
18 think the cows are a rather benign influence when it comes to
19 the air pollution problem.

20 SENATOR AYALA: I don't have any more questions.

21 SENATOR BEVERLY: Any further questions? Senator
22 Petris.

23 SENATOR PETRIS: You've been quoted back in August
24 1992. I don't know whether that still pertains, but the
25 quotation in the National Review that you said that the number
26 one killer of business in California is the AQMD, which is so
27 powerful as to have nearly dictatorial authority over four
28 Southern California counties.

1 Is that your statement?

2 MR. HEWITT: That is, in fact, my opinion, and it
3 remains especially true now that we have to act with great
4 caution, Senator.

5 The change in workers compensation is one of the
6 biggest obstacles to business in Southern California, but I
7 served at the request of the district before I was appointed to
8 it as a member of the Special Commission on Air Quality and the
9 Economy. We received testimony from over 200 witnesses, and in
10 1992, it was, in fact, the district that was killing jobs at a
11 horrendous pace in the South Coast.

12 SENATOR PETRIS: Was that through its regulations?

13 MR. HEWITT: Yes, sir, and the inability to move as
14 quickly as was necessary to allow business to survive the
15 recession.

16 It was a cumulative impact of many factors, but the
17 district was being unresponsive at that time. It has since
18 changed number of its most onerous provisions, including some
19 due to the intervention of this body, and Senator Polanco's
20 bill, and others.

21 SENATOR PETRIS: Does that mean you don't feel that air
22 pollution causes any business problems or extra expenses?

23 Let me repeat it in a different way. I'm trying to get
24 your position clear.

25 I guess what you're saying is, it's better to let them
26 go on polluting than to regulate them.

27 MR. HEWITT: No, Senator. It is vitally important --
28 it's expensive to do this. I'm sure you know. The AQMP has

1 estimated it'll cost five-and-a-half billion dollars over the
2 next ten years, but the health benefits are estimated to be in
3 excess of six billion dollars over the next ten years.

4 It's just important that we not regulate without an eye
5 on the bottom line and on business, or other areas. I'll give
6 you one example.

7 When 2202 passed in December, after I had lost the
8 first vote with my two colleagues, I made a motion to bring it
9 back for a question of whether or not we would exempt schools.
10 Then it came back last month with amendments that I had put
11 forward.

12 And we had testimony from the Los Angeles Unified
13 School District. And I asked their representative, how much has
14 Rule 1500 cost you? And over the last four years, it has cost
15 the Los Angeles Unified School District a half million dollars a
16 year to comply with this rule.

17 By virtue of my amendments, we were able to return to
18 the Los Angeles Unified School District a half million dollars a
19 year. Same air quality benefits, but just that we kept an eye
20 on how we wrote our rules.

21 That's what I bring to the district. I don't think it
22 has to be a zero-sum game. You can have a healthy economy and
23 clean air, but it takes particular attention and care in the
24 drafting of the rules.

25 SENATOR PETRIS: In how you do it.

26 MR. HEWITT: Yes.

27 SENATOR PETRIS: Do you think it's a health problem at
28 the present time?

1 MR. HEWITT: Yes, it is.

2 SENATOR PETRIS: Do you expect to see that clear up in
3 the reasonable, foreseeable future, or do you think that's
4 something we're going to have live with for a long, long time?

5 MR. HEWITT: We are on target by 2010 to hit the
6 federal attainment goals. And I think if we hit federal
7 attainment, we will have made significant progress in the South
8 Coast, but that depends on your timeframe. Fifteen years is
9 still a long time. I have small children. I don't want them to
10 breathe this stuff through the next 15 years, so we've got to
11 keep making progress.

12 SENATOR PETRIS: I'm told that in the South Coast
13 Basin, one or more health-based air quality standards are
14 violated over 200 days out of every year.

15 MR. HEWITT: Cumulative, yes. Some of those occur on
16 the same day.

17 For example, VOCs, NOx and SOx might all be violated on
18 one day, so that 200 days out of the year, we're not out of
19 attainment, but if you added up the number of standards that we
20 violated, you would have 200 different violations, yes.

21 Did I make myself clear with that?

22 SENATOR PETRIS: No, not for me.

23 MR. HEWITT: We have a lot of different pollutants that
24 we have goals to meet, volatile organics, nitrous oxide,
25 particulate matters. And we might violate all of those goals on
26 any given day, so we might get four tickets on one day. So, we
27 might have unhealthy air 50 days a year, which would lead to 200
28 violations.

1 I do want to compliment the district, though, in one
2 respect. The number of days on which those violations occurred
3 have dropped precipitously over the last ten years. The effect
4 of the regulatory environment has worked in a number of areas.
5 Didn't work with ride sharing, but it worked with some of our
6 stationary sources controls. So, we've made significant
7 progress, but we still have too many nonattainment days.

8 SENATOR PETRIS: There was a lot of publicity a few
9 years ago, maybe a couple years ago, about companies leaving the
10 Basin because of air pollution regulations.

11 Now, we often get those reports, and sometimes when I
12 track them down, I find that's not the reason why they left at
13 all. I remember one case in particular. The headquarters of
14 the company was in Tennessee, and they had made a decision at
15 the national level to pull in units from all over the country
16 and kind of centralize and consolidate.

17 But the public statement issued by the local manager in
18 California attributed the move to totally unrelated things. It
19 wasn't air pollution in that case; it was something else.

20 Now, so that's why I'm asking. The spotlight was
21 focused on a lot of companies leaving at a particular period of
22 time. I don't know if you'd have anyway of knowing that, or
23 whether you were on the Board at the time, but can you comment
24 on that?

25 MR. HEWITT: Yes. I was on the Special Commission on
26 Air Quality and the Economy at the height of the recession. And
27 we received a lot of testimony from people in whom the decision
28 to relocate, air quality control regulations had been a factor.

1 They would not go so far as to say it drove them out, because
2 workers' compensation would have also not been enacted at the
3 time, so they cited it as factor.

4 Only in two discreet areas did I find that it
5 repetitiously killed jobs. One was in the furniture and wood
6 coatings industry area, where we really do have the toughest
7 rules on the block, and it makes it very difficult. And most of
8 that has moved to maquiladoras and out of state.

9 The second area where it is of sufficient -- is in dry
10 cleaning. Some people simply cannot afford the new equipment
11 and the changeover, and some firms did collapse as a result.

12 I hesitate, there are no hard and firm numbers to go
13 with. It is an across the board kind of situation, but it does
14 serve as a factor in decisions to relocate by a number of
15 industries.

16 SENATOR PETRIS: I've always been suspicious of those
17 announcements. I've seen it in my own district. A whole
18 General Electric plant closed down, moved out, and they made a
19 big public to do. Then we found out that their move had nothing
20 to do with the reasons they gave publicly. They're just
21 settling the score with certain local council members and maybe
22 planning commission members, what ever it happened to be.

23 Now, I was asked in this particular period when
24 companies seemed to be moving out, a lot of them went to Texas.
25 And I was asked to comment on it, and what am I doing about
26 trying to keep them in California.

27 My question was, well, what's the price of keeping them
28 here? I understand the reason they left is because they don't

1 like the air pollution control regulations. I've done some work
2 in this field in legislation, and I found conditions were very,
3 very bad. This was way back in the '60s, probably when you were
4 in grammar school, or even before.

5 But anyway, I found that, for example, a study done at
6 the county level by some health people that checked out the most
7 polluted areas of the Los Angeles basin. They couldn't find one
8 child -- and they checked a lot of them through the schools --
9 they couldn't find one child, age 12, who had lived in the Basin
10 his or her entire life up to then without measureable, objective
11 evidence of lung damage, attributable to the normal sources of
12 air pollution, automobile and stationary.

13 That kind of shook me up, you know. I've had meetings
14 with medical people on that. In fact, the study was done, as I
15 recall, by the Medical Association. I think it was assisted to
16 some extent by the statewide, but it was a local Medical
17 Association that become so alarmed that they went into it.

18 So, that's why I'm concerned about what's the current
19 level, and how much is it impacting on the health of the people
20 in the area, to the extent that we know?

21 MR. HEWITT: Senator, if I can comment on that, Gladys
22 Mate, who's the principal spokesperson for the Lung Association,
23 first person I met with when I was named to the Board, we
24 agree. There's no question about it, that air pollution can
25 kill people, and it can certainly exacerbate asthma. It can do
26 a lot of dilitorious health effects.

27 So, the district has a role, and it's important that it
28 do that role, and do that role well.

1 It's also important, though, because that role is
2 expensive, in my view, that it not legislate in areas that
3 either have been marked off by legislative decision, or that do
4 not advance the goal of clean air, for a couple of reasons.

5 One, it flies in the face of our basic
6 executive-legislative framework. But more importantly, it saps
7 energy and credibility from the agency when it must make hard
8 decisions in areas that are expensive but yet return real air
9 quality benefits.

10 As I said earlier, the only area of controversy I've
11 had in a year, and we've done a half dozen major rules, and 35
12 different amendments, has been the attempt to repeal a rule that
13 did not clean the air, which was Rule 2202, which is ride
14 sharing. It did not have the effect that it was proposed to do
15 good. And a good agency will retreat from a bad rule so that it
16 will not drain credibility from its good rules and its effective
17 rules, the rules which you and I would probably agree are
18 necessary to advance the shared goal of clean air.

19 SENATOR PETRIS: How was that established? Did they do
20 a study during the whole period when that was in effect?

21 MR. HEWITT: Yes, we did. In fact, we did a number of
22 outside industry studies that showed that the cost per pound of
23 improvement by taking it out of the air far over -- was far too
24 expensive to continue on that path. That it was much better to
25 invest that money in other control measures.

26 SENATOR PETRIS: Do you know the study that Cal State
27 Fullerton did?

28 MR. HEWITT: Yes, I am aware of it. In fact, I've

1 interviewed authors of it on the air.

2 SENATOR PETRIS: As I understand it, they couldn't find
3 any measureable negative impact, and they reached -- I'll quote
4 it. That's why I'm reading it. They reached the following
5 conclusion in their summary, quote: "There is little reliable
6 quantitative data which supports the conclusion that heavy costs
7 are imposed on the economy by air quality regulations," close
8 quote.

9 MR. HEWITT: The Cal State Fullerton study, I believe,
10 concludes its data collection in August of 1990, Senator, which
11 is prior to the onset of the deepest trough of the recession.

12 Even the proponents of that study, I believe, would
13 admit that it does not speak to the cumulative effects of
14 recession and air quality control. And that if they extend that
15 study out and additional five years, I believe they will have
16 radically different results.

17 SENATOR PETRIS: Do they intend to do that, as far as
18 you know?

19 MR. HEWITT: I do not know. I assume -- it's a good
20 university program, so I assume they'll be updating it, but
21 there is a lag in the data that is considerable for this sort of
22 stuff.

23 SENATOR PETRIS: They also said they did not find that
24 air quality regulations created significantly higher costs for
25 California industries compared to those in other states.

26 I guess you read the whole report.

27 MR. HEWITT: I read the whole report. There are some
28 areas where I agree with them on that. The mobile refineries,

1 the refineries are actually going to make money as a result of
2 this because we've obliged them to develop the technology in the
3 reformulated gasoline that will corner the market.

4 On the other hand, in the areas such as I've mentioned,
5 furniture, dry cleaning, the costs have been enormous, and those
6 individual businesses had to flee, or close, or move out of the
7 Basin, or just go out of business.

8 So, it's an irregular effect, the cumulative total of
9 which comports with their conclusion, but on a case by case
10 basis, the district's regulations have had very significant
11 impacts sometimes.

12 SENATOR PETRIS: Well, the conventional wisdom of the
13 critics is that that's what drove a lot of businesses out,
14 over-regulation and so forth. But other studies show that they
15 were driven out -- they left when the defense spending went down
16 the tubes by much greater numbers.

17 Is that correct?

18 MR. HEWITT: It's impossible -- I don't think
19 generalizations as to why businesses left California work,
20 because defense build down is obviously -- that's 88,000 jobs in
21 three years, my understanding, direct jobs.

22 At the same time, the district does take its toll.
23 I've mentioned a couple of industry segments where it hurt.

24 But the generalizations as to why California had a bad
25 patch simply don't hold up from whichever person's agenda is
26 being served by it. There are lots of reasons. The district
27 has occasionally served in some industry segments to drive
28 business away.

1 SENATOR PETRIS: Do you still represent the Building
2 Industry Association?

3 MR. HEWITT: No, I don't.

4 SENATOR PETRIS: When you did you stop?

5 MR. HEWITT: 1991. I do represent a number of land
6 owners, a number of builders, but not the BIA itself.

7 SENATOR PETRIS: That's on a smaller scale.

8 MR. HEWITT: There are -- some are quite large
9 projects. We represent Lockheed Corporation. They're large land
10 owners.

11 SENATOR PETRIS: Large in other ways, too.

12 MR. HEWITT: Yes.

13 SENATOR PETRIS: Well, the question is the same,
14 regardless of the scope.

15 That is, isn't there a conflict between representing
16 those who obviously need to expand, and acquire more land, and
17 build on it, and manufacture on it, and so forth, versus the air
18 pollution restraints, which are going in the opposite direction.
19 Maybe not prevent them from building, but to put in tight
20 regulations and make sure that their activities are not harmful
21 to the public.

22 MR. HEWITT: No, Senator. I served as Assistant
23 Counsel in the Reagan White House, and I learned the conflict
24 rules up and down because we did not want our nominees to get
25 into trouble. And I've been very careful to seek the advice --

26 SENATOR PETRIS: Which White House was that?

27 MR. HEWITT: Reagan White House, 1984, '85. It
28 happened after I left, Senator.

1 SENATOR PETRIS: Mr. Chairman, I'll refrain from any
2 conflict on the Reagan conflicts. It would take me too long to
3 enumerate them.

4 MR. HEWITT: But I've gone to the -- great lengths of
5 requesting, for the first time in the history of the Board, an
6 opinion from counsel on all of my law firm's clients on every
7 matter coming before the Board because I am aware that even the
8 appearance of impropriety can follow you for your entire career,
9 and I will not allow that to happen.

10 SENATOR PETRIS: Okay. Thank you, Mr. Chairman.

11 CHAIRMAN LOCKYER: Were there other questions from
12 Members, or may we take comment from interested citizens.

13 Are there people present who would wish to support
14 confirmation? Any supporters at this time.

15 Are there opponents or those who would express concerns
16 who wish to comment at all? Please come forward.

17 MR. WHITE: Mr. Chairman, Members, John White
18 representing the Sierra Club.

19 We are opposed to Mr. Hewitt's confirmation on the
20 grounds of lack of balance in both temperament and his
21 approach.

22 I have to commend the Committee for getting more
23 elicitation of support for the public health mission of the
24 agency today than we've heard in the whole time of his presence
25 on the Board. But I think it's really a question of having an
26 advocate for a single point of view, versus someone that's
27 trying to represent the broader public interest.

28 Mr. Hewitt is a skilled and knowledgeable advocate,

1 although I would reference his earlier comment about the number
2 of violations does relate to the ozone standard. I think that
3 number is probably 150 violations a year, but they are not
4 aggregated, and there is no standard for volatile organic
5 compounds. It's the constituent that makes ozone.

6 We think that the AQMD has fallen too far in the other
7 direction. The Board as a whole has moved aggressively in
8 response to one segment of the community's interest, and we
9 think that the representatives from the Governor need to reflect
10 a broader point of view.

11 We find him an engaging individual, and his television
12 program is widely watched in the region. But for purposes of
13 this position, we'd like to see the Governor do better.

14 Thank you.

15 SENATOR LEWIS: Mr. White, you started off by saying
16 that he lacks balance, he has a lack of balance?

17 MR. WHITE: Generally, yes. We've found that --

18 SENATOR LEWIS: My question.

19 MR. WHITE: -- he's fairly one sided.

20 SENATOR LEWIS: My question is, referring to the lack
21 of balance, how about a board that, on a nine-to-three vote,
22 votes to override the will of the Legislature when --

23 MR. WHITE: Well, I would dispute that
24 characterization, Senator.

25 SENATOR LEWIS: -- when you're one of the three in the
26 minority, how much of a dominant vote do you want? Do you
27 want it to be 10-2, 11-1, 12 to nothing? What kind of balance
28 are you seeking?

1 MR. WHITE: That isn't what I'm -- first of all, this
2 is a vote to establish an alternative program that would allow
3 -- let's understand what the facts are. What we're talking
4 about is whether or not employers should be given the option of
5 off-setting the employer -- employee trips with measures other
6 than ride sharing, okay.

7 He wants to have there be no opportunity to require
8 ride sharing. What the proposal was is to give employers the
9 option of meeting the burden in a variety of ways.

10 I think the main problem with the proposal is, it's two
11 years too late. I think it would have probably solved the
12 problem had it been put in place earlier.

13 But I'm talking representing more than the interest of
14 the economic impact of those regulated by the agency. We'd like
15 to see some consideration, such as the Committee began to elicit
16 today, for the other part of the mission, which is protecting
17 public health, which is looking at the long-term benefits of air
18 pollution control, and not only the impact on the regulated
19 community. And it's that single-minded focus on only looking at
20 the impact on the regulated community that we object to.

21 SENATOR LEWIS: Well, Mr. White, this Legislature came
22 to the conclusion, and I authored the bill, that mandatory ride
23 sharing programs as incorporated in rules like Regulation 15,
24 were not cost effective and did not work. And to the extent
25 that the district tries to enforce a program like that, as
26 Mr. Hewitt eloquently stated a little while ago, I think the
27 public starts to --

28 MR. WHITE: Senator, if it was such open and shut case,

1 then, you wouldn't need another bill this year to correct the
2 situation. If in fact the law says they can't do it, they can't
3 do it. I think there's a question about that.

4 I think what we ought to do, instead of having an
5 atmosphere of blame and argument, we ought to see if we could
6 get on with the business of more cost effectively regulating
7 indirect and other mobile sources. We just heard about all the
8 regulations on stationary sources that we don't want to have for
9 people leaving the economy. That leaves mobile sources.

10 In fact, I think, the option of providing employers
11 with flexibility in meeting an obligation is a good
12 development. And I think if your bill is written such that, in
13 fact, if the action they took is prescribed, you don't need
14 another bill. So, it ought to be in court.

15 I think this is going to be joined in other forums.

16 I don't dispute vigorous debate on this issue. What
17 we're looking is for representative of the Governor to reflect
18 more than the interest of the regulated community, and that's
19 what we haven't seen, although the discussion today has been
20 helpful in that regard, and I encourage you to keep up with it.

21 SENATOR LEWIS: Clearly, what you want is a rubberstamp
22 Board.

23 MR. WHITE: No, I'd like to see some balance. I'd like
24 to see some interest given to the health of the young people
25 growing up in Los Angeles, some vision for technology, some
26 vision for the future.

27 You know, nobody goes before a body and wins all the
28 time. I would say in recent times, the environmental community

1 has been losing consistently at the district. And Mr. Hewitt is
2 certainly not a part of a minority in that sense. In that
3 sense, it's a broad shift that's occurred. Those of you that
4 have that point of view should be happy with the district.

5 We're looking for something a little more than one
6 single, narrow point of view on this position.

7 CHAIRMAN LOCKYER: Okay, had you concluded?

8 MR. WHITE: Yes.

9 CHAIRMAN LOCKYER: Next comment.

10 MR. ABRAMOWITZ: Thank you, Mr. Chairman, Members of
11 the Committee. My name is Mark Abramowitz. I'm President of
12 Community Environmental Services in Yorba Linda.

13 For 15 years I've worked on air quality issues, and
14 I've also served as former Chairman of the Hearing Board,
15 Variance Hearing Board of the South Coast Air Quality Management
16 District. My job was to grant regulatory variances.

17 Currently, I provide services to major corporations,
18 trade organizations and community groups.

19 I've sent a very strong letter to the Committee
20 already. I'm not going to repeat that information here.

21 I don't believe that Mr. Hewitt possesses the
22 qualifications, temperament, nor the integrity needed for the
23 Air Board position. He flunked Senator Petris' quiz that he
24 gave him, and I'll get to that in a minute.

25 In the past, the Governor has appointed some excellent
26 and well-qualified people to the Air Quality boards, such as
27 Mr. Hewitt's predecessor, Steve Albright, and CARB Chairman,
28 Jon Dunlap. You don't have to agree with an appointee in his

1 point of view, but the appointee ought to be a qualified
2 candidate.

3 Mr. Hewitt, I believe, has a possible conflict of
4 interest, and I know Senator Petris addressed that, so I won't
5 go into that any more.

6 He appears today to sound very good in terms of air
7 quality. He talks very good talk, but the walk that he walks is
8 not the same as you've heard him today. In fact, his rhetoric
9 normally is just very different than what you've heard him say
10 here.

11 I don't believe, and I think much of the community does
12 not believe, that he's concerned about air quality, that only he
13 is seeking to satisfy some sort of anti-regulatory agenda. He's
14 not knowledgeable about air pollution and its impacts.

15 As Mr. White indicated, we don't have a standard for
16 VOC. That was one of the examples you got. He was completely
17 wrong about your example on cumulative versus not cumulative.
18 He flunked Air Quality 101. I teach air quality. He doesn't
19 have an understanding of the fundamental basics about air
20 quality.

21 I'd like to share with you some fundamental information
22 that, perhaps, Mr. Hewitt does not seem to be aware of. Ozone
23 levels, such as those frequently here in the South Coast -- down
24 in the South Coast Basin, can cause shortness of breath, pain
25 and coughing, increased susceptibility to infection and lung
26 damage. This occurs especially among children and other
27 sensitive individuals.

28 Committee Members, there are many days when my

1 four-and-a-half year old and others cannot play outdoors like
2 kids should be, because they'd be subjected to temporary and
3 permanent lung damage, lung damage which hits young, developing
4 lungs.

5 Even my son's pediatrician in Anaheim Hills has noticed
6 that not only does my son get frequent upper respiratory
7 infections, but that many others do in amounts greater than that
8 found in normal populations elsewhere. This incidence is so
9 high that my son's doctor keeps several machines available in
10 his office so that patients can borrow these machines that can
11 quickly deliver medication to young, wheezing lungs.

12 A recent American Lung Association study showed that in
13 my Orange County, meeting health standards for particulates
14 would decrease children's restricted activity days on an annual
15 basis by 185,102, or 5,698 occurrences of acute bronchitis in
16 children. And Orange County is frequently cleaner than the rest
17 of the Basin.

18 Mr. Hewitt does not belong setting air quality policy,
19 impacting my son, my son's friends, or anyone else.

20 Let me close by pointing out one last irony.

21 Mr. Hewitt doesn't believe in regulation by non-elected
22 persons. In other words, he's opposed to doing the very thing,
23 the very job that he is asking to be confirmed to.

24 Mr. Hewitt, I don't believe, takes seriously the job of
25 protecting public health, but if he is concerned, the joke will
26 be on the rest of us.

27 Thank you very much.

28 SENATOR AYALA: Mr. Chairman.

1 CHAIRMAN LOCKYER: Yes.

2 SENATOR AYALA: The gentleman brought out the point of
3 qualifications, and I'm looking at the qualifications. Under
4 the rules, the Governor appoints one of the 12 members. The
5 appointment of the Governor has to be a physician who is trained
6 and experienced in the health aspects of air pollution, an
7 environmental engineer, a chemist, meteorologist, or a
8 specialist in air pollution control.

9 Mr. Hewitt, you're an attorney.

10 MR. HEWITT: Yes, Senator.

11 SENATOR AYALA: Where in these do you fit in, what
12 category?

13 MR. HEWITT: I believe the Governor appointed me
14 because of my service on the Special Commission on Air Quality
15 and the Economy, on which I was Vice Chair, and my service as
16 Chair of the Rule 15 Regulatory Review Committee, both of which
17 I undertook on a voluntary basis over the course of
18 two-and-a-half years. Mr. Abramowitz, in fact, served on the
19 Reg. 15 Committee with me.

20 And on that basis, as well as my prior service as
21 General Counsel and Deputy Director of a federal agency, which
22 required confirmation by the United States Senate, he concluded
23 that administrative law combined with that particular air
24 quality gave me the background.

25 I will readily admit, I am not a physicist. I am not as
26 well schooled as Mr. Abramowitz, but I believe I'm very well
27 qualified and have discharged my duties.

28 SENATOR AYALA: You feel your background qualifies you

1 as a specialist in air pollution control?

2 MR. HEWITT: Yes, sir, especially with regards to
3 mobile sources and those which we dealt with on the special
4 commissions on which I have served.

5 SENATOR LEWIS: Mr. Abramowitz, I think I heard you to
6 say that Mr. Hewitt had a conflict of interest? Would you
7 specifically let us know what that conflict is?

8 MR. ABRAMOWITZ: I think I said I was concerned about a
9 possible conflict of interest. And I think, as Mr. Hewitt
10 admitted, there is the issue of appearance of conflict or a real
11 conflict.

12 SENATOR LEWIS: I think what he said was that he was
13 doing everything possible to make sure that there would not be
14 any appearance of a conflict.

15 MR. ABRAMOWITZ: Well, he does have clients which would
16 be impacted by indirect source regulations, by other
17 regulations, and any requirements, even as fundamental as the
18 state implementation plan.

19 SENATOR LEWIS: Why don't you give us a specific
20 example of a client, an issue in which he has engaged in a
21 conflict of interest.

22 MR. ABRAMOWITZ: Well, I think if I recall, he just
23 gave two examples of clients of his. I think he said one would
24 be Lockheed. He also indicated other large land owners.

25 Certainly to the extent that the Air District looks at
26 indirect sources and looks at regulations, and where to put the
27 kind of burden, that certainly impacts his client very
28 specifically.

1 Lockheed also was subject to many different kinds of
2 air quality controls, VOCs, which, although there's no standard
3 for it, does result in ozone. Lockheed, I believe, is one of
4 the larger emitters in the South Coast Basin. There is a
5 concern about conflict.

6 When I was on the Hearing Board, I recused myself even
7 for an issue that happened ten years before, for something I
8 didn't get paid for, and I didn't even remember the issue.
9 That's the kind of care that you have to have.

10 I can't think of very many things that Mr. Hewitt would
11 be able to vote on, given the kind of appearance of conflict
12 that there is.

13 SENATOR LEWIS: Mr. Hewitt, should the FPPC or somebody
14 else be investigating you right now for conflicts of interest?

15 MR. HEWITT: Well, Senator, I don't mind being called
16 stupid, but I don't like having my integrity called into
17 question.

18 That's why I asked Tom Hayden to come down and
19 introduce me. That's why Bill Press would have been useful to
20 receive a letter from. That's why Eric Mann from the Labor
21 Community Strategy Center, one of the more vocal environmental
22 groups, they might not agree with me, but I have never, ever had
23 my integrity questioned, and I don't believe Mark intended to do
24 that.

25 I thought I heard some back pedaling there, and I
26 appreciate that, Mark.

27 CHAIRMAN LOCKYER: Well, I guess I would add, Senator
28 Hayden could have been here and isn't, so I don't think it's

1 particularly fair to use his name as somehow an implied
2 endorsement, or Bill Press, who could have been made an opinion
3 known.

4 I would note that what the three of you have in common,
5 and I think perhaps it's a defect for this particular job, is
6 being media personalities. And as a general matter, I think
7 probably media personalities are required, by the kind of
8 communication they involve themselves in, to overstate and
9 over-simplify, and make issues hot to be interesting to
10 listeners.

11 Those are exactly not the qualities we need in public
12 service, where our tasks are to bring people together, to
13 de-emphasize points of disagreement and emphasize areas of
14 agreement.

15 And so, I've often thought that Mr. Herscheson or
16 Mr. Press, and I didn't know of your work, though I occasionally
17 see the Bay Area feed of the program, enough that I have been
18 able to evaluate your philosophy and ability to speak quickly,
19 before most people's mind works.

20 I make that point, that I just think it's a discipline
21 and a form of advocacy that is different than public service.

22 With respect to the discussion of a conflict, I don't
23 think anyone that I've heard, and I've read all the documents, I
24 don't think anyone's accusing you of any personal omission or
25 commission --

26 MR. HEWITT: I appreciate that, Senator.

27 CHAIRMAN LOCKYER: -- that's violative of the law.
28 Certainly, we have not heard anything like that.

1 The question I would have to raise, however, because
2 I've got your SEI report that you're required to file as a
3 public official, and we all are required to file these things,
4 it looks like, if I've done my math correctly, in excess of 200
5 businesses that your firm represents. I believe it's correct to
6 call them all businesses; there may be a few exceptions, but
7 where you're obligated to report because the firm receives more
8 than \$10,000 in income from each. I believe that's the
9 rule.

10 MR. HEWITT: No, Senator. I believe our \$10,000
11 clients -- would that that were true, Senator. It's a much
12 lower level.

13 CHAIRMAN LOCKYER: Pardon me, there's a list of 10,000,
14 where the pro rata share to yourself would be 10,000 or more.

15 MR. HEWITT: It's a very small list, Senator.

16 CHAIRMAN LOCKYER: Actually, that list is still pretty
17 substantial, but mostly the types we've talked about: Peters
18 Company, Kemper Real Estate, Lockheed, Sherman,
19 McDonald-Douglass, Pardee Construction, Quick Silver, Rubie's
20 Diner, Bell Jackpot Casino, Gateway Industries, Barrett
21 American, Kajima Engineering, Lakeview Investments, Western
22 Waste Industries, Tejon Ranch, and so on.

23 But the other form -- actually, I don't know what the
24 trigger is. It doesn't say.

25 MR. HEWITT: I think it's a hundred bucks. I think
26 it's a hundred dollars.

27 CHAIRMAN LOCKYER: I don't know. I guess I should know
28 that.

1 It's obvious, many of these would be firms that -- I
2 don't think it's fair to make a law firm publicly disclose every
3 client; that is, every amount paid by every client. So, that's
4 part of the difficulty here, is that the law reflects that sense
5 of fairness in not necessitating a disclosure, other than the
6 fact that there's income from 200 different businesses.

7 MR. HEWITT: That's true.

8 CHAIRMAN LOCKYER: The question, then, isn't one of
9 conflict in the technical or legal sense. It's more a matter of
10 conflict in the sort of moral or philosophical sense.

11 If you are a free market advocate, which seems to be
12 your basic philosophy, if your income is largely derived from
13 lawyering with, or at least the law practice income, I think
14 that probably is most of it -- Bill Press got a pretty good
15 deal, I must say. I don't think that's true with yours.

16 MR. HEWITT: Senator, can I interject one thing? To
17 answer the conflict issue, I hate to beat my own --

18 CHAIRMAN LOCKYER: The point is this, should we be
19 concerned not about conflict, again, that somebody's accusing
20 you of violating a law? That's the problem whenever we use that
21 word.

22 But the question is, is there a conflict in the sense
23 of a philosophy that's inappropriate for balanced, fair public
24 judgments on the board on which you sit?

25 MR. HEWITT: And I don't think there is, or you'll end
26 up enacting a standard that would prohibit lawyers from doing
27 anything.

28 As a means of illuminating this --

1 CHAIRMAN LOCKYER: A lot of people would agree with
2 that.

3 MR. HEWITT: That could be, but I like lawyers. I
4 think lawyers tend to know what they're doing. I teach
5 Constitutional Law, and we put it together to begin with.

6 The FPPC has a rule that if you are paid to give a
7 speech, even if you're nonpaid member of the board, you can't
8 accept that. It's part of the media business that people will
9 offer you outlandish amounts of money to speak, money which I
10 have been directing to charity over the last year because, even
11 though my general counsel tells me I have an argument to accept
12 it, I don't want to run the risk.

13 This Board has literally cost me tens of thousands of
14 dollars to serve on because I believe that -- Mark might not
15 believe it -- in the public health interest.

16 We go to such great extent, Peter Greenwald and I, each
17 month, to go through that list of clients and say, is there any
18 way, and I have recused myself, perhaps, on a half dozen times:
19 waste industries, landfill operator. Most recently, there was a
20 remote rule that could have touched upon, though it wasn't going
21 to, landfills. I recused myself. That's part of the business.

22 If the government wants to have successful
23 professionals with an ability to cover a lot of different
24 grounds and to be in the law business, they have to accept that
25 burden, and I accepted that burden.

26 I do understand what you had to say about the media. I
27 think it was Disraeli that said the majority is better than the
28 best repartee, and when we're often in the minority, repartee is

1 all that we have, and I use repartee.

2 But I do do this business seriously. I take my job
3 seriously.

4 One other last question, I didn't mean to imply Senator
5 Hayden would have endorsed me. In fact, when I talked to Patty,
6 his administrative assistant, I said, "By all means, have Tom
7 tell them he won't vote for me. I just would like him to speak
8 to our collegiality."

9 CHAIRMAN LOCKYER: It's clear from your presence today,
10 you'd be a lot of fun to be collegial with.

11 Next.

12 MR. PATTON: Mr. Chairman and Members, Gary Patton,
13 General Counsel of the Planning and Conservation League.

14 We are here to oppose the nomination of Mr. Hewitt. We
15 have submitted a letter.

16 I apologize for not having been in the room for the
17 entire time of this testimony. I've been in some other
18 committees in your house and in the other house.

19 I did check to see generally what sort of testimony had
20 been forthcoming, and was able to listen to the last part of the
21 dialogue in which you were involved, Mr. Chairman.

22 I think that the issues I was most concerned of
23 bringing to the Committee's attention, I think, have been raised
24 and brought to your attention.

25 We are a membership organization. We have about 10,000
26 members individually, and a number, 250 or more, of
27 organizations statewide. We do hear from time to time from our
28 members on significant issues, and this appointment we consider

1 to be a significant issue.

2 We have heard from members. They are concerned about
3 the kind of conflict which does not charge the violation of the
4 law specifically, but does go to the essence of being able to
5 serve in an impartial, balanced way, in a body that is dealing
6 with what I think is this state's largest, not only
7 environmental problem, but economic problem, which is solving in
8 the South Coast the problem of air pollution.

9 And Mr. Hewitt, to our members, does not present
10 himself as a person who can, in a balanced way, do a good job of
11 that, and we suggest that you not confirm him, or recommend that
12 he not be confirmed.

13 Thank you very much.

14 CHAIRMAN LOCKYER: Mr. Hewitt, when you were Deputy in
15 OMB, what was the 6,000 personnel agency you were responsible
16 for overseeing?

17 MR. HEWITT: The Office of Personnel Management employs
18 6,000 individuals. It's a successor agency to the Civil Service
19 Commission, which was implemented in 1978 with the Civil Service
20 Reform Act.

21 CHAIRMAN LOCKYER: So, in effect it was the federal
22 civil service system?

23 MR. HEWITT: Yes, sir.

24 CHAIRMAN LOCKYER: Thank you.

25 Yes, sir.

26 MR. McCAULL: Thank you, Mr. Chairman and Members. My
27 name is John McCaull, California Legislative Director for the
28 National Audubon Society.

1 For similar reasons, our organization is opposing
2 Mr. Hewitt's nomination.

3 I have to say right up front that our organization does
4 not frequently appear before the South Coast Air Quality Board,
5 and I personally have not worked on issues before the Board.

6 However, our organization frequently comes into contact
7 with Mr. Hewitt on land use matters regarding some of his
8 clientele. And in the letter that I submitted to the
9 Committee, as well as some attached documents, I tried to lay
10 out at least some of the written statements that Mr. Hewitt has
11 made in that realm.

12 It may be somewhat of a stretch to say that because of
13 our differences of opinion on how land use matters should be
14 dealt with in Southern California, that we also would then
15 therefore assume that Mr. Hewitt would not represent the state
16 and the public well on the Air Quality Board; however, this does
17 come down to a matter of philosophy.

18 As you mentioned, we have a situation where the free
19 market is clashing with the public trust in air, water, and
20 wildlife, and we believe that Mr. Hewitt's record speaks for
21 itself, and that we cannot support some of the positions he's
22 taken regarding the public trust, and we have to oppose his
23 nomination.

24 I'd be happy to answer any questions.

25 CHAIRMAN LOCKYER: Thank you.

26 Anyone else that wishes to comment.

27 Mr. Hewitt, it appears to me that when the Board was
28 focused in on stationary sources, you were critical of rule

1 making that would constrain business activity with respect to
2 those stationary sources. That is, organic compounds and other
3 things that were emissions.

4 MR. HEWITT: Among rules I've supported in that area
5 are 1107, 1115, 460 --

6 CHAIRMAN LOCKYER: Numbers don't mean anything.

7 MR. HEWITT: I've been pretty active.

8 The only rule on which I've had a split on the Board in
9 this first year has been 2202, ride sharing.

10 CHAIRMAN LOCKYER: So, then let me ask, if about
11 three-fourths of all of the air pollution is attributable to
12 mobile rather than stationary sources, what are we going to do
13 about that.

14 MR. HEWITT: You were out of the room, Senator.
15 Senator Lewis a little expressed dismay with me because I'm in
16 favor of indirect source regulation.

17 What I am not in favor of is defying the will of the
18 Legislature, which is what AQMD did in December of 1995.

19 CHAIRMAN LOCKYER: I suggest to you that's disingenuous
20 as an answer, and I don't think that's what motivated your
21 position, and I'll bet I can find comments you made prior to the
22 enactment of that bill that were critical of the policy.

23 MR. HEWITT: I was very critical of ride sharing, but I
24 wrote the 1501.1 Rule, which said, within the context of a ride
25 sharing rule, what would you do? We came up with three
26 alternatives. I liked those alternatives, one of them being the
27 air quality investment program, because I think it promises much
28 more return in air quality.

1 It's not disingenuous to this extent. I filed a
2 statement with all of the members of the AQMD which said,
3 whether or not you like ride sharing, we will have earned the
4 contempt of the Legislature if we roll them. It is not our job
5 to disagree with you.

6 That was -- that's heartfelt. That's absolutely
7 heartfelt. That's as conservative a position as a conservative
8 can get: Legislatures win over administrative agencies.

9 CHAIRMAN LOCKYER: You probably are Frankfurter when
10 you're teaching Constitutional law.

11 MR. HEWITT: That is who I quote, Senator.

12 CHAIRMAN LOCKYER: What are we going to do about the 75
13 percent?

14 MR. HEWITT: There's some good things to do. AQIP has
15 raised about two million dollars in the first year of its
16 operation. AQIP can buy old cars, which promises more of a bang
17 for buck, and it has done that.

18 I'm in favor of using it as well to develop additional
19 programs that serve cross constituencies that training and
20 repair of old vehicles that are also high polluters.

21 There are ways to get at the mobile sources that do not
22 compel the social engineering inherent in 1500.

23 CHAIRMAN LOCKYER: The social engineering is just doing
24 anything to restrict people's driving habits?

25 MR. HEWITT: No, no. Social engineering is deeply
26 intrusive attempts to use the employer, where we can tax --
27 Senator Lewis and I disagree a little bit on this -- there are
28 indirect effects that intellectually to me, to go after the

1 employer.

2 But when you start to use the employer to control the
3 lives of the employee, beyond, perhaps, paying that fee that
4 ought to be the concomitant expense of pollution, then you're
5 asking the employer to serve as an extension of the state to
6 control that person's individuality, which is something you
7 might want to do as a Senator, because you'll be accountable to
8 your constituencies, but to which an administrative agency,
9 asking the employer to then control their employees for the
10 benefit of the goal, strikes me as being four levels removed
11 from where the accountability ought to run.

12 CHAIRMAN LOCKYER: That's not an answer to the
13 question.

14 It might be better to do this on one of the programs.

15 MR. HEWITT: You've stiffed us a couple of times.

16 CHAIRMAN LOCKYER: But to just briefly join the issue,
17 we have legislatively adopted federal and state guidelines or
18 rules for clean air, and then delegated responsibility to figure
19 out specific enforcement regimes with groups like the Air
20 Quality Board.

21 To suggest that somehow they're not as legitimate, I
22 think, asks us to do something we can't do or probably shouldn't
23 do. That is, the Legislature shouldn't try to adopt regulatory
24 orders with the specificity that you find in the enactments of
25 the Air Board.

26 MR. HEWITT: I agree with that. The Legislative veto
27 is really what I perceived in Senator Lewis' and Senator Hurtt's
28 bill, which is, having delegated broadly to the agency, and the

1 agency taking from that a number of tools to use in its mission,
2 it set upon one which, over a period of six years, proved to be
3 ineffective and somewhat costly. Therefore, you repealed its
4 efficacy.

5 I saw the Assembly, and the Senate, and the Governor
6 saying, do anything you want in this area, but don't use ride
7 sharing. We don't like it, and we don't want it, and our Board
8 contriving a way to get around the clear intent of the law.
9 That's where the big controversy was about.

10 CHAIRMAN LOCKYER: As someone who voted for the bill,
11 unlike Senator Petris, I, at least defend the spirit of the
12 legislation. I think there's a fair debate about whether it was
13 a loophole, or an ambiguity, or whatever, that allowed for the
14 continuation of the program.

15 It seems to have been a problem that's been fixed in a
16 substantial way by the rule making that you've done, and all
17 parties seem to agree that that's been the final result, for
18 which I compliment everybody, including yourself, for
19 participating.

20 SENATOR LEWIS: Not all parties, Mr. Chairman.

21 CHAIRMAN LOCKYER: I guess maybe that's the next
22 question I should ask.

23 There are bills currently in progress, separate from
24 this one. The current one by Senator Lewis would reverse the
25 current, most recent rule. Am I correct about that?

26 MR. HEWITT: Yes, sir.

27 CHAIRMAN LOCKYER: Do you have a feeling about the
28 bill?

1 MR. HEWITT: No. The AQMD has voted to oppose it.

2 I have to explain that by saying I have a feeling about
3 the bill. I understand Senator Lewis' anger, and I would
4 support the bill if called to testify upon it, but the district
5 doesn't have a position.

6 My position about administrative agencies is that they
7 ought not to lobby Legislatures. They do not have an
8 independent consciousness, an independent existence. They ought
9 to provide technical assistance, but that expenditures to lobby
10 elected officials by administrative agencies seems to me to be
11 an aberration from appropriate constitutional procedure.

12 CHAIRMAN LOCKYER: So, the Governor shouldn't either?

13 MR. HEWITT: The Governor is an equal branch to you, so
14 I think he can. It is independent agencies that are not equal
15 that I do not believe in lobbying.

16 CHAIRMAN LOCKYER: The tens of thousands that work for
17 him can then also?

18 MR. HEWITT: Yes.

19 CHAIRMAN LOCKYER: But you support the bill?

20 MR. HEWITT: I would testify, yes, in support.

21 CHAIRMAN LOCKYER: What about the Hurtt bill that would
22 allow Orange County, for example, to withdraw?

23 MR. HEWITT: Yes, sir.

24 CHAIRMAN LOCKYER: Is there a Lewis bill that would
25 have several members of the Board directly elected rather than
26 appointed?

27 MR. HEWITT: That's the most important one, in my
28 opinion.

1 CHAIRMAN LOCKYER: Other questions from Members?
2 Senator Lewis.

3 SENATOR LEWIS: Just a couple quick comments.

4 You were talking about possible alternative strategies,
5 and two that weren't mentioned, one was with the advent of
6 better and better technology in the remote sensing devices.

7 Secondly, one of the failings of the ride sharing
8 program, one of the reasons it hasn't worked, is because of the
9 small universe of people when you're dealing with one particular
10 company. That's why maybe a more aggressive program, like the
11 older commuter computer program, something like that, where you
12 have a much larger universe of people to draw from, those kind
13 of programs make a lot more sense.

14 MR. HEWITT: We've done more in one year to advance
15 remote sensing, in that it's a technology-driving,
16 employment-enhancing technology that is owned by Southern
17 California companies, with the adoption of 1501 than had been
18 done in the previous ten years.

19 SENATOR LEWIS: It's kind of a misnomer to be talking
20 about being opposed to ride sharing. We're not opposed to ride
21 sharing, but the kind of trip reduction plans that have
22 evolved. That's what we have found to be ineffective.

23 CHAIRMAN LOCKYER: Well, there's a huge paperwork
24 burden which seemed to me to be unproductive and unuseful in
25 obtaining clean air goals. So, in that respect, I tend to
26 agree.

27 Although, I think ride sharing is ultimately what we'll
28 have to figure out, or counties like Orange County won't have a

1 functioning transportation system. It barely functions now, and
2 L.A, and the Bay Area, and so on.

3 SENATOR LEWIS: Mr. Chairman, a little earlier in the
4 day, I whispered to you that in Republican circles in Orange
5 County, Hugh Hewitt is often referred to as being a more
6 moderate Republican. You replied to me, and it got kind of a
7 horse laugh from me, a little too loud in this committee room,
8 that that probably spoke more about Orange County Republican
9 Party, or the Orange County Republican scene rather than
10 Mr. Hewitt.

11 However, having said that, I think Mr. Hewitt has done
12 an admirable job today of explaining very well his public health
13 concerns, but also realizing the need for a certain amount of
14 balance in terms of making sure that the regulations that are
15 adopted by the AQMD are those that are the most cost effective
16 as possible.

17 And there is not a conflict between those two points of
18 view, and I'd like to move his confirmation.

19 CHAIRMAN LOCKYER: If you want to say anything in
20 close, you can. There is no need to.

21 MR. HEWITT: Senator, I'd like to thank the Committee
22 for being very open, having a good conversation on the issues.
23 I appreciate that consideration.

24 CHAIRMAN LOCKYER: It is hard when you vote no on
25 confirmations. It feels like it's too personal, that you're
26 somehow rejecting the human being.

27 I want to at least start by saying that that's not what
28 I'm doing. I'm very impressed. It's obvious that you're bright

1 and well-educated, and, in addition, have added word smith
2 skills to numerous skills that have helped you through the
3 years, and now especially, in your mass communication goal.

4 I'm concerned first that I think the Governor has
5 displayed this general pattern of making political appointments,
6 and then trying to figure out how it will fit the statutory
7 requirement for certain kinds of expertise.

8 While you obviously have learned and are a quick
9 learner, and you've obviously learned something about air
10 pollution control, I think it tortures the statute to describe
11 you as an air pollution specialist, which is what's required of
12 the law.

13 That is a not a complaint I have about you. It's a
14 problem I have with the appointing authority, and a pattern that
15 I regularly see with this administration.

16 My second concern is that I really think the TV
17 advocacy role is too hot for deliberate public policy work,
18 especially in a sensitive area such as air pollution regulatory
19 work. And I haven't seen what I think is the appropriate policy
20 balance. Just confined to your own thinking and philosophy, it
21 may be your approach is a very needed one to correct and undo
22 regulatory emphasis that we've seen with the Board in the past.

23 I'd suggest, however, the right way to correct that is
24 the way you've done, beat them up on the air, not try to do that
25 and serve as a member of the Board at the same time.

26 So, for those reasons, I am voting no.

27 If anyone else want to add anything, I'm open to that,
28 but we have a motion by Senator Lewis before us.

1 Call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: No.

4 SECRETARY WEBB: Ayala No. Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Petris.

7 SENATOR PETRIS: No.

8 SECRETARY WEBB: Petris No. Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

11 CHAIRMAN LOCKYER: No.

12 SECRETARY WEBB: Lockyer No. Fails two to three.

13 CHAIRMAN LOCKYER: It stays with us.

14 SENATOR BEVERLY: I have a further motion, Mr.

15 Chairman. I recommend nomination go to the Floor without
16 recommendation of the Rules Committee.

17 SENATOR LEWIS: Second that motion.

18 CHAIRMAN LOCKYER: We don't need seconds here.

19 Let's call the roll. This is a no recommendation
20 motion.

21 SECRETARY WEBB: Senator Ayala.

22 SENATOR AYALA: No.

23 SECRETARY WEBB: Ayala No. Senator Lewis.

24 SENATOR LEWIS: Aye.

25 SECRETARY WEBB: Lewis Aye. Senator Petris.

26 SENATOR PETRIS: No.

27 SECRETARY WEBB: Petris No. Senator Beverly.

28 SENATOR BEVERLY: Aye.

1 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

2 CHAIRMAN LOCKYER: No.

3 SECRETARY WEBB: Lockyer No. Fails two to three.

4 CHAIRMAN LOCKYER: Other forums, Mr. Hewitt. We're
5 going to at least let you take all those speaking fees now that
6 you've had to give up.

7 MR. HEWITT: Come to the show sometime, Senator.

8 CHAIRMAN LOCKYER: Thank you.

9 What's our next one? Mr. Stamison. It might be
10 quicker if we did Veneman. Is there anyone here in opposition?
11 Maybe we can move this along and you can get back to work.
12 Opposition on Ms. Veneman.

13 There is some. I Guess we'd better wait, then, I'm
14 sorry.

15 Is there opposition to Veneman present.

16 Ann, come on up. We're going to try to speed this along
17 a little, get you back to your job, over-regulating everybody.

18 I think we have a glass of methyl bromide for your
19 water glass here.

20 MS. VENEMAN: Oh, thanks.

21 CHAIRMAN LOCKYER: Go ahead. Did you have an opening
22 statement at all.

23 MS. VENEMAN: Yes.

24 CHAIRMAN LOCKYER: Do you like this job?

25 MS. VENEMAN: Some days.

26 CHAIRMAN LOCKYER: One out of how many?

27 MS. VENEMAN: Mr. Chairman and Members of the
28 Committee, it's truly an honor for me to be here before this

1 Committee as the Governor's appointee as Secretary of the
2 Department of Food and Agriculture.

3 As most of you know, I had the privilege of working for
4 the U.S. Department of Agriculture for almost seven years. And
5 I really feel fortunate to have had that opportunity, because I
6 believe it was an invaluable experience for the position that
7 I'm now in.

8 From 1991 until 1993, I was the Deputy Secretary of
9 Agriculture, where I was responsible for overseeing the
10 management of the U.S.D.A., its 42 agencies, and its more than
11 62 billion dollar program budget.

12 Prior to that appointment, I was the Deputy
13 Undersecretary of International Affairs and Commodity Programs.
14 In that capacity, I was responsible for all the international
15 programs, including food aid, trade negotiations, and
16 international market development. I was actively involved in
17 trades negotiations, including US-Canada free trade agreement,
18 the Uruguay round and bilateral disputes.

19 While the decision to return to California to assume
20 this position was not an easy one, I am happy to be back home.
21 One of the things that I learned in Washington is that very few
22 people around the country really understand the importance of
23 agriculture to this great state. As I've traveled throughout
24 the state in the past several months, I've seen first-hand the
25 change that's occurring everyday in agriculture.

26 California is, without question, the most sophisticated
27 agriculture economy in this country and indeed the world. We
28 are the nation's top producer, the top exporter, and the leader

1 in applying new technology and innovation to agriculture.

2 In fact, agriculture has long been one of the
3 strengths of California's economy. Nearly one in ten jobs is
4 directly related to agriculture, and that number jumps to more
5 than one in four in the Central Valley.

6 With world population expected to double within the
7 next 30 years, and 95 percent of that growth occurring outside
8 the United States, we must continue working to prepare for the
9 future and to maintain our state's competitive edge in the world
10 marketplace. Opening new markets to California agricultural
11 products will provide the single largest opportunity for
12 agriculture to not only feed our country, but the rest of the
13 world.

14 In 1994 alone, agriculture products leaving California
15 ports hit a record number: \$11.8 billion, representing nearly
16 15 percent of all U.S. agricultural exports. With every \$1
17 billion in exports, it's estimated that 27,000 jobs are created
18 here in California.

19 As we approach a new century, our agricultural
20 industry, and the world in which it must compete, are changing
21 rapidly, and we must be prepared to adapt to that change and to
22 maintain California's unique leadership role. Here in
23 California, we have the tools to compete with anyone in the
24 world.

25 The Department is committed to serving the citizens of
26 this state by promoting California agriculture and fostering
27 public confidence in the marketplace through the development,
28 implementation and communication of sound public policies and

1 programs.

2 I want to thank you, Mr. Chairman, for this opportunity
3 and the Members of the Committee, and I'll be happy to respond
4 to any of your questions.

5 CHAIRMAN LOCKYER: I guess I'd like to ask about water
6 contamination from nitrates or pesticides. Every month, there
7 seems to be a new report of some sort that expresses concern.
8 Metropolitan Water District estimated annual loss of four
9 percent of their water supply due to nitrate exposure. It seems
10 to be a growing and alarming problem.

11 Is anything going on to address those issues?

12 MS. VENEMAN: Well, as you know, Mr. Chairman, we don't
13 have direct regulatory authority over those issues.

14 We are, however, continually looking at new
15 technologies, at integrated farming practices, and we have
16 developed a policy unit within the Department to have input into
17 all of these kinds of issues and programs so that we can assist
18 with agriculture.

19 We're also working very closely with many of the
20 universities on these kinds of programs so that we can, as a
21 Department, try to integrate with the regulatory agencies as
22 well as the new technologies to help reduce the kinds of -- any
23 kinds of chemicals that are used on agriculture, and to make
24 sure that we're the leader in adopting new technologies.

25 CHAIRMAN LOCKYER: Let me ask if there are questions?
26 Senator Ayala.

27 SENATOR AYALA: While you were in my office about a
28 month ago or so, we discussed the med fly situation, which

1 occurred in the '60s and then again not too long ago.

2 In the '60s, they sprayed the agricultural area,
3 because that's where it was, around San Jose, in that area. And
4 at that time, they had malathion to spray the orchards, and
5 another method to attract flies by some substance they would put
6 in the tree. About 20 years later, we had infestation in the
7 San Fernando area, in fact down where I live in San Bernardino
8 County. At that time, all they had was malathion and that other
9 substance.

10 Are we going to improve on that? I inquire about that
11 because they had a number of advertising on televisions that
12 would say it was harmless, because they showed a little baby
13 rolling over on the lawn as they were spraying. It was
14 harmless. Would not be harmful to health.

15 Now I see where I gave you an article where it said
16 that the World Resources Institute had scientific studies of a
17 number of these pesticides, and among them was malathion. It
18 would be harmful and capable of damaging immune systems and
19 increasing rates of infectious disease and cancer. That's
20 malathion.

21 If we have another infestation, do you plan to spray
22 people with the malathion?

23 MS. VENEMAN: Well, I think, Senator, when we discussed
24 this in your office, I think we went over the fact that
25 malathion has been used for control or for eradicating med flies
26 in certain infested areas.

27 But I think it's important to note a couple of things.
28 One is that square mileage that has actually been treated with

1 malathion is very small compared to where we've be using
2 alternative technologies. The area -- the Corona area was only
3 about 18 square miles, and the Camarillo area was about 16
4 square miles.

5 If you compare that to where we've been using the
6 sterile release technology, the sterile med flies as an
7 alternative to spraying malathion, it's about 1461 square
8 miles.

9 The Department, and obviously this predates my time
10 there, has, I think, tried to use the malathion spraying to the
11 minimum extent possible, but at the same time, we do have a
12 responsibility to control these kinds of outbreaks. We are
13 right now, we have completed our eradication program. We are
14 going to continue a prevention program that includes sterile
15 release of med flies, and as well, we are continuing to work
16 with various agencies of the U.S. government, including the
17 Agricultural Research Service, and other research organizations,
18 to look for alternatives. In fact, one of the alternatives of
19 methyl bromide will be tested starting this week. It's a
20 nonchemical substance called Sure Die.

21 So, we are looking continually at alternatives in
22 helping to both support and fund some of the alternative
23 research.

24 SENATOR AYALA: So, you're saying that the spraying of
25 malathion is okay in minute quantities?

26 MS. VENEMAN: Well, malathion, according to the Health
27 Department, does not produce a significant health risk to
28 humans, according to the Health Department.

1 Since 1990, it's important to note that the dosage that
2 we have used for malathion has actually been cut by 50 percent
3 in these areas as well. So, I think it's working at it from
4 both ends.

5 SENATOR AYALA: I understand med flies are brought in
6 by people themselves most of the time.

7 But the last time that we had that problem, they were
8 spraying residential areas, and not one drop in the inland
9 valley, because they wanted to stop the med fly from getting
10 over there where agriculture was. So, people were getting
11 sprayed so that the farming community would benefit in the
12 Central Valley.

13 But I don't know that their produces were down low at
14 the marketplace for those folks that suffered from the
15 spraying. They were spraying to save the Central Valley from
16 getting infested, and I supported that because agriculture is
17 very important to California.

18 But somehow or another, it doesn't seem fair to spray
19 people in Southern Cal so that the farmers can be protected, and
20 they don't sprayed. I have a problem with that.

21 MS. VENEMAN: Well, as I said, we are continually
22 looking at new technologies to avoid aerial spraying of
23 malathion.

24 I understand the concern in the residential areas,
25 because I happened to be in Washington at the time that was
26 going on and heard many of the same concerns.

27 At the same time, I think it is very important to look
28 at the significance of agriculture in this state, and look at

1 the reasons why it's those areas that are sprayed, because we
2 normally find the outbreaks in the backyards of residential
3 areas. That's normally where we have found the outbreaks in --
4 at least the recent outbreaks that we've had.

5 SENATOR AYALA: I can understand why they spray.
6 That's where the flies were, but they avoided from getting
7 involved in the Central Valley. But somehow or another, it
8 doesn't feel right to spray people so that they can save an
9 industry, which really, they have to pay the same price for more
10 at the marketplace after they get sprayed.

11 So, I don't know how you can correct that, but anyway,
12 I thought I'd let you know that we were concerned about any
13 further spraying in Southern Cal.

14 MS. VENEMAN: I recognize that. I think many people
15 are.

16 CHAIRMAN LOCKYER: Any other questions from Members?
17 Anyone in the audience that wishes to comment.

18 I just would conclude by, perhaps, remarking that
19 you're sort of vita is extraordinarily complete, balanced,
20 you've done a lot of different things. It's a very interesting
21 history. You've shown commitments to a variety of different
22 public and private roles. It's good, very nice.

23 MS. VENEMAN: Thank you.

24 CHAIRMAN LOCKYER: Motion on this matter.

25 SENATOR BEVERLY: Move we recommend confirmation.

26 CHAIRMAN LOCKYER: All right, we have that motion made.
27 Call the roll.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye. Senator Lewis.

3 SENATOR LEWIS: Aye.

4 SECRETARY WEBB: Lewis Aye. Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Petris Aye. Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

9 CHAIRMAN LOCKYER: Aye.

10 SECRETARY WEBB: Lockyer Aye. Five to zero.

11 CHAIRMAN LOCKYER: Thank you.

12 MS. VENEMAN: Thank you, sir.

13 CHAIRMAN LOCKYER: Next is Mr. Stamison, good
14 afternoon. Do you want to start with any general statement at
15 all, sir?

16 MR. STAMISON: Yes, Mr. Chairman, I would like to make
17 a few brief comments.

18 Mr. Chairman and Members, thank you for the opportunity
19 to address the Senate Rules Committee regarding the Department
20 of General Services, and to answer any questions you may have of
21 me.

22 My name is Peter Stamison, and since being sworn in by
23 Agency Secretary, Joanne Kozberg, on May 1st of last year, I've
24 served as the proud Director of General Services and its nearly
25 3700 employees.

26 I'd like to briefly share my background with you. I've
27 been in the private sector my entire formal working life prior
28 to May Day of 1995. I worked as an executive for two highly

1 respected Fortune 500 companies.

2 I began two entrepreneurial start-up ventures in
3 telecommunications, both headquartered in Southern California,
4 and was in the process of forming another private sector venture
5 when I was called by an executive search firm about the
6 administration's interest in having a business executive with my
7 kind of background and track record run DGS.

8 I was first skeptical that anything could be done to
9 change the perceived unfriendly attitude California conveys
10 towards its businesses and taxpayers. Secretary Kozberg
11 convinced me otherwise. So, I accepted the challenge and began
12 the work.

13 DGS, as most of you probably know, consists of six
14 operating divisions and 23 operating or support offices.

15 Aside from Caltrans and CHP, we operate and manage the
16 next largest fleet in state of over 5,000 vehicles.

17 We are the landlord for the state, overseeing \$300
18 million a year in lease payments. We own the buildings for the
19 state, and are currently in the process of four major projects
20 in terms of consolidating state agencies and state employees in
21 four different parts of our fair state, to the tune of over a
22 half a billion dollars that I've signed off on.

23 By the way, we also operate, through our
24 Telecommunications Division, the third largest telephone
25 operation in the state, and the thirteenth largest in the
26 country.

27 Our mission is quite clear. As the business manager
28 for the state, we're to derive the best value in necessary and

1 essential services in a timely manner at the lowest possible
2 cost to our customer agencies. The better DGS performs its job,
3 the better and more effectively our customer agencies can serve
4 California taxpayers and citizens.

5 In order to accomplish this mission, the Department has
6 embarked upon a strategic and significant change in direction.
7 That is, to become a customer-focused and results driven
8 organization, not one of process and control.

9 Our specific Department goals, as outlined in the 1995
10 budget bill, are to achieve by June 30th, 1999, or before, a DGS
11 that will: one, provide services the Legislature or Governor
12 mandate; two, offer other essential and necessary services on a
13 nonmandated and cost competitive basis; and three, discontinue
14 control functions not required by the Legislature, the Governor,
15 or our customer agencies.

16 To achieve this goal, we must affect a serious change
17 in our departmental culture. Real change happens only when you
18 have a talented, dedicated, and motivated workforce with an
19 attitude and work ethic that understands and accepts the reasons
20 and need for this kind of change.

21 I've been blessed with an executive team, office
22 chiefs, and a workforce that is most receptive to the need for
23 DGS cultural change.

24 After eleven-and-a-half months on the job, nearly 700
25 meetings, and 40 speeches or presentations, I can share with you
26 first-hand that I feel quite strongly about DGS's capability of
27 delivering on our promises.

28 I've met with our customers, and I've heard the good,

1 the bad, and the downright ugly comments about the DGS of the
2 past.

3 But having said that, I find no customer agency or
4 other stakeholder unwilling to work with us to build a better
5 DGS, because they know how helpful we can and could be in
6 helping them accomplish their missions.

7 I've said before, I'm a sucker for a challenge. After
8 only 11 months on the job, I can share with you that with the
9 right leadership, attitude, and ethic, good people and continued
10 support from you and the administration, we have begun to make
11 the changes necessary to again make California competitive.

12 I ask you today most respectfully to allow me more time
13 to complete the job.

14 Thank you.

15 CHAIRMAN LOCKYER: Thank you, sir.

16 Maybe we should start just by taking any testimony,
17 since there are so many different dimensions to this job. It
18 might help us focus in on relevant things.

19 If there are people present who wish to comment, either
20 for or against, or express concerns, please feel invited.

21 Who's first here?

22 MR. AMARO: I'll go first.

23 Mr. Chairman and Committee Members, my name is Allen
24 Amaro. I'm a representative for the Disabled Veterans Business
25 Enterprise Network, which comprises of approximately 100-plus
26 certified disabled veteran businesses here in Sacramento and
27 Northern California.

28 I hope that you had an opportunity to read our one-page

1 letter in opposition to Mr. Stamison being confirmed as Director
2 of General Services. If you would like, I could in less than
3 one minute --

4 CHAIRMAN LOCKYER: Yes, tell us the concern.

5 MR. AMARO: It says, the Disabled Veterans Business
6 Enterprise Network, Sacramento and vicinity, strongly opposes
7 the confirmation of Peter Stamison as Director of General
8 Services because: after nearly one year, one, he has failed to
9 establish goals for California's small businesses pursuant to
10 Government Code 14838, which constitute 98 percent of all
11 California companies.

12 What we mean by that is, 98 percent of the businesses
13 in the State of California are classified as small businesses.

14 He has failed to establish a small business and
15 disabled veteran business advisory council to oversee and assure
16 that fair and impartial implementation of meritorious programs
17 pursuant to Government Code -- Military and Veterans Code 999.4,
18 which have been established by the Legislature.

19 Three, the direct consequence of his inaction has
20 caused significant damage to the small business community, and
21 the loss of subcontracting opportunities to disabled veterans --
22 you'll have to excuse me -- the opportunity to -- measures.

23 It says, we have now suffered about a 70 percent
24 reduction in those outreach to disabled veteran businesses, and
25 we find that partially as a result of anti-affirmative action
26 measures.

27 And though we're not listed in the anti-affirmative
28 action bills, we still suffer collateral damage to that for the

1 simple fact -- I'd like to explain this question. Maybe I'm
2 getting ahead of myself.

3 The simple fact of it is, as the minority and women
4 programs seem to be fading out, and there seems to be some
5 opposition to that program, we have suffered collateral damage
6 in the fact that they're -- if no contacts need to be made, or
7 no emphasis is put outreach to those, we fall in the same goal
8 type of program.

9 And I sit at a data base and control a data base of
10 over 2,000 contacts. We have suffered 70 percent reduction in
11 that data base in the last one year.

12 Number four, he has sponsored new procurement
13 initiatives. California Reform Act, which is CARA, AB 3307,
14 which is Marilyn Brewer, which have significant impact on the
15 small and disabled veteran business community, in that these
16 initiatives would have the following adverse impact: (A) reduce
17 the number of contracts that are approximately 4,000 to about
18 200, so that the top 200 to 100 suppliers would be the only
19 state suppliers; (B) wants state procurement officers to get in
20 bed with contractors to establish long-standing relationships to
21 benefit the state; (C) wants to modify lowest responsible bid
22 doctrine to allow the state more flexibility in selection of
23 bids that provide best value, not lowest price to the state; (D)
24 improvise a DVBE program that is unchanged, but deletes the
25 five-step process for good faith.

26 If you want me to explain that part of it, it's that
27 there'd be no way to oversee, make sure that we're treated in a
28 fair and equitable process.

1 Then five, it says, clearly the total adverse impact of
2 the new procurement initiatives contained in AB 3307, which is
3 293 pages, is far too numerous to be addressed here. Those that
4 have been cited represent the most significant, because they
5 directly impact contracting opportunities lost or to be lost to
6 the California small business disabled veteran community.

7 The DVBE Network strongly opposes confirmation of Peter
8 Stamison as Director of General Services, and I'm here as member
9 of that organization to answer any questions.

10 CHAIRMAN LOCKYER: Maybe when they get to be kind of
11 detailed, we ought to ask for some response rather than wait for
12 a generic one.

13 I guess the issue that's been raised deals with trying
14 to dramatically reduce the number of individual contracts that
15 would be entered into, and the thought that if it goes from
16 4,000 to 200, or whatever numbers -- is it 4,000? Is that the
17 number.

18 MR. AMARO: Yes, approximately.

19 CHAIRMAN LOCKYER: That there'd be greater difficulties
20 for small business, whether it's the disabled vets or whom ever,
21 but just small business generally to get a piece of the contract
22 work.

23 Can you help us understand what's going on?

24 MR. STAMISON: Well, I would agree with Mr. Amaro that
25 it would be very difficult, in fact, if the legislation said
26 that, for anybody to do business in the state if you're going to
27 take it down to 200.

28 On the contrary, the legislation that we're sponsoring,

1 the Brewer bill, 3307, intends to do just the opposite.

2 We're very concerned with the current process as it
3 exists today through all areas.

4 In fact, one of the many goals we're trying to obtain
5 is to entice more suppliers to bid on state contracts. AB 3307
6 achieves this through the competitive negotiation process, best
7 value contract criteria, a faster, less costly protest process,
8 prompt payment provisions, and decentralizing the acquisition
9 process.

10 We again, like Mr. Amaro, are very concerned. In fact,
11 in April of 1992, the Procurement had a total of 13,374
12 prequalified vendors on bid lists. As of June, 1995, the list
13 has dwindled to 7720, a 57 percent decrease. This happened way
14 before my watch.

15 I think it's indicative of the fact that the way we are
16 doing things now, the most onerous procurement process in the 50
17 states in this fine Union, happens to exist the this state, and
18 we are trying to clear it up through CARA.

19 CHAIRMAN LOCKYER: Could you explain what's different
20 conceptually? I haven't read this 300-page bill, so I'm
21 unfamiliar with the Brewer proposal.

22 What do the other states do that's different than us,
23 or that we do that's unusual, that you're trying to simplify?

24 MR. STAMISON: We're trying to put -- right now, there
25 are three different levels of rules and regulations that
26 encompass general purchasing for the state. We have a different
27 set of rules, and regulations, and law, for commodities, a
28 different set for information technology, and a different set

1 for services.

2 We want to streamline that and make one set of criteria
3 exist for all of those. That's what some of the most successful
4 states have done already. In fact, the federal government,
5 through their usage, has attempted to do that and is successful
6 in doing that.

7 Senator, by decentralizing procurement authority,
8 state entities will be able to contract with businesses located
9 in their area. Decentralizing is a major benefit to both small
10 businesses and state agencies.

11 DGS wants to be an enabler, a facilitator of
12 businesses. And when it makes best sense for individual
13 agencies to go out and do their procurement, we will provide
14 them with the expertise and the knowledge, and the capability to
15 allow them to do that, and thereby significantly lower the
16 gestation period that exists between a bid process and award.

17 Hopefully, doing it this smart and this quickly, we're
18 going to avoid the tremendously costly [sic] to the taxpayers,
19 to the vendors, to the end users of this rather onerous protest
20 process that we have right now in our system. It really stinks.

21 I don't think there's anybody in the small business
22 community, or any business community, that doesn't agree.

23 We are losing our suppliers and our intention good
24 vendors, droves of them, a 57 percent decrease since April of
25 '92. And we're concerned about that, and we want to do
26 something about it. We want to change it, and 3307 will help us
27 do that.

28 MR. AMARO: May I make a comment to Mr. Stamison.

1 Mr. Stamison said that he was trying to increase the
2 amount of contracts, not decrease the amount of contracts.

3 I sat before a presentation of CARA in December of 1995
4 and listened to one of his deputies, Mr. Charles Chuck Grady,
5 make this statement.

6 This letter that I have signed, I've signed as to what
7 I heard personally, when I sat in front there, of the
8 presentation and listened to the presentation being put on.

9 The presentation was put on. It was very clear. At
10 that time, I voiced some concern about how small business would
11 be able to act in a procurement process when they want to take
12 the total number of contracts -- not vendors, contracts --
13 decrease them from 4,000 to one in 200.

14 They used one example, and I'll cite you this example.
15 It was Office Depot. We can use Office Depot, get turn-around
16 response right now, rather than go out and let individual people
17 bid these contracts.

18 So, I don't mean to be argumentative with Mr. Stamison,
19 but I was there. That's what I heard.

20 Another thing is, he quotes the fact that we've had a
21 decrease in over-all vendors since 1992. We've had a decrease
22 in business since 1992, a very large and significant decrease in
23 over-all business since 1992.

24 I can see where some of those vendors went. A lot of
25 those were small businesses, like myself and the people that I
26 represent, because of lack of opportunity and general recession.

27 CHAIRMAN LOCKYER: I think it's probably impossible for
28 us to hear all the details of this bill. That's going to be

1 heard anyhow some day in G.O., I guess, but just to know there's
2 a concern.

3 Senator Ayala, did you have a question?

4 SENATOR AYALA: Just an observation.

5 I had met with Mr. Stamison, and at that time I had no
6 letters of opposition.

7 All of a sudden, I get a whole bunch written almost
8 identical, similar to the one the gentleman presented.

9 They all start off by saying he has failed to establish
10 goals for California's small businesses, 14838(a) Government
11 Code, which constitute 98 percent of all California companies.

12 It seems like the same person wrote them all. Who
13 wrote your letter? Did you write your own letter?

14 MR. AMARO: I wrote my own letter.

15 SENATOR AYALA: Everybody copied you.

16 MR. AMARO: I can't tell you whether everybody copied
17 it or not. We are a small business community. We all interact,
18 and we do go to similar meetings.

19 SENATOR AYALA: But these are written from all over the
20 place. They're almost identical, so I'm suspicious of something
21 like that.

22 MR. AMARO: All I can say is, Senator Ayala, they are
23 pertinent, true facts that concern the small business community.

24 SENATOR AYALA: I don't dispute them. It just seems to
25 me the same person wrote all the letters. That's the only thing
26 I'm questioning.

27 CHAIRMAN LOCKYER: Next witness.

28 MR. GUERRERO: My name is Paul Guerrero. I represent

1 the United Minority Business Entrepreneurs of California.

2 I was also asked to speak on behalf of the Northern
3 California Latin Business Association, CHISPAS.

4 I will say, I wrote my letter. It does look like his.
5 I went to some of the same meetings, and have the same concerns.

6 But my concerns go beyond him. Because, at my age,
7 when somebody tells me they want to make change, and they want
8 to eliminate the criteria that you use to measure, I get
9 nervous, because right now, we have a good system. I mean,
10 everybody turns a bid in, and who's ever low gets the contract.
11 That's the way it should be.

12 And if we have a small business program, or we have a
13 minority program, or we have a disabled veterans program, there
14 has to be a criteria to measure it. To simply have the program
15 is worthless.

16 Now, I didn't read this 293-page bill. We divided the
17 thing up, and people have read it. We've had people analyze it.

18 What it does, one of the things it does is eliminates
19 the Office of Small and Minority Business.

20 Now, if they wanted to take out the word minority,
21 fine, but they should have kept the Office of Small Business
22 because it has a measurable criteria. It substitutes that
23 measurable criteria for the criteria of the Director. And I
24 can't quantify what his measurement is.

25 Here on this page, and I just scratched out -- this is
26 stuff that I've found in here. It establishes goals consistent
27 with those established by the Director. And to date, the
28 Director has established no small business goals. So, what do

1 we measure by? Nothing?

2 And it scratched out Office of Small and Minority
3 Business.

4 This goes on throughout the thing. It puts in words
5 like, the Director will contract out, the Director will award
6 contracts. And then, consistent with that, with those words
7 that are put in, it takes out the words that say, where ever the
8 total consideration of a contract exceeds \$2,500, it shall be
9 awarded to the lowest responsible bidder. That's scratched out
10 throughout here.

11 I get nervous when someone tells me that they're going
12 to take 4,000 contracts and narrow them down to 100 and use the
13 words -- because Allen wasn't the only person present at that
14 meeting -- and use the words, we're going to get in bed with a
15 hundred contracts; that's the way we do business in the private
16 sector.

17 This gentleman did not say it, but one of his deputies
18 did.

19 I get nervous, and I want to see us have the low bid
20 system.

21 If that's what the new Director is bringing to
22 California, boy, I hope that this Committee doesn't buy it,
23 because it's something that we don't need.

24 We need a low bid process, and we need someone with
25 that concept, and we need someone with minority business -- not
26 minority business -- yeah, minority business, but small business
27 oriented, too, because most minority businesses are small
28 businesses. But we need someone that has that focus.

1 Also, we have an initiative coming up in November, and
2 the people of the State of California are going to decide
3 whether we have a minority business program or not.

4 I don't think we need the Director of General Services
5 to usurp that decision.

6 I'm quite sure that this bill will never get past the
7 Senate.

8 But beyond that, it's the concept of it, and it's the
9 thinking, the reasoning behind somebody who would even proffer
10 this to the Senate that concerns me.

11 And so, I would urge you to vote no; to not, you know,
12 put this man before the Floor, because he scares me.

13 Thank you.

14 SENATOR BEVERLY: I'm a little confused.

15 I think everybody's goal is the same, to do what's best
16 for the state and to help business, small or whatever.

17 Let me ask a question. Does your proposal do away with
18 the lowest responsible bidder concept?

19 MR. STAMISON: We are talking about the best value for
20 the state, Senator, our proposal.

21 CHAIRMAN LOCKYER: What are the words?

22 MR. STAMISON: The exact wording?

23 CHAIRMAN LOCKYER: I guess we'd better ask, the old law
24 and the new law?

25 MR. STAMISON: I don't have it, I don't have a
26 comparison.

27 CHAIRMAN LOCKYER: Do you have the bill with you?

28 MR. GUERRERO: Yes, I do.

1 CHAIRMAN LOCKYER: What's the current standard and
2 what's the bill --

3 MR. GUERRERO: The current standard right now is the
4 lowest responsible bidder.

5 CHAIRMAN LOCKYER: What's substituted?

6 MR. GUERRERO: The Director. Establish -- no, over
7 here, pardon me.

8 The Department shall contract with qualified
9 architects, engineers -- this is that portion of it -- for the
10 performance of work when it is determined by the Director of
11 General Services that the obtainable staff is unable to perform
12 the particular work, period.

13 It's like an open book to me.

14 MR. STAMISON: Let me double-check here.

15 I have Steve Olsen, my Chief Deputy here, who was very
16 much involved in the crafting of this wording.

17 MR. OLSEN: Senator Lockyer, Members of the Committee,
18 Steve Olsen, Chief Deputy of General Services.

19 A complete explanation of all the changes, as you're
20 aware, would take quite some time.

21 CHAIRMAN LOCKYER: We don't want to rehear the bill.

22 MR. OLSEN: The concept of best value is one that
23 already exists in state procurement law. It is a clearly
24 established principal for information technology, acquisitions.

25 This particular bill would expand the use of best value
26 concepts under certain circumstances.

27 Clearly, in situations where the commodity or service
28 is very clearly described, in which there is a very specific

1 specification of the goods or services that would be acquired by
2 the state, that is a situation in which the state would continue
3 to use low bid as the basis for awarding the contract.

4 The best value concept is a situation, and it's an
5 emerging procurement concept that is used by a wide variety of
6 public agencies to make decisions about procurement in
7 situations where the actual solution is not well defined. And
8 it's one that's already used in the technology area.

9 Basically, the concept is that the state, rather than
10 saying this is exactly the list of specifications that is
11 required to solve the state's business problem, the state
12 instead would say, this is the business problem. We need
13 assistance from vendors in describing what the solutions would
14 be. And there is a very systematic method to assign value to
15 the different solutions that are proposed by the different
16 vendors that would be competing.

17 The bill specifies the circumstances in which best
18 value is appropriate and which it is not appropriate, and it
19 does specify clearly the situations in which low bid is
20 appropriate and not appropriate.

21 CHAIRMAN LOCKYER: Well, for purposes of today, I guess
22 it's fair to say there is a recommended change in the
23 procurement policy from the previous, perhaps overly rigid, or
24 almost universal, lowest responsible bidder, or lowest qualified
25 bidder sort of approach to something that is more of a
26 negotiated price.

27 MR. OLSEN: No.

28 CHAIRMAN LOCKYER: Is that not how this works?

1 MR. OLSEN: No.

2 The prices under the best value concept are not
3 negotiated.

4 There is a method that is established to assign points
5 to the different proposals that are made by vendors. It is a
6 system that is open and competitive, and the people that are
7 making decisions about which contractor would receive the
8 state's business would be required to document the reasons for
9 awarding the points in each and every instance.

10 CHAIRMAN LOCKYER: All I can say is, my experience of
11 every state contract that awards grants and other things with
12 points, almost always it's overly political. And they admit
13 that they made mistakes every time you ask them about why they
14 did it the way they did it.

15 It sounds like it could be another one of those.

16 G.O. will hear this bill. There's at least a couple of
17 Members who are present who probably will hate having to hear it
18 all again.

19 So, let's move on to a different topic, if there is
20 one.

21 MR. STAMISON: Could I add just two things to the
22 comment that Mr. Guerrero said.

23 Number one, I have about fifteen letters here from
24 small business owners that have written either to the Governor,
25 myself, or my predecessor, saying: your system stinks. I don't
26 want to do business with you anymore. Do you realize how
27 onerous it is, and what have you.

28 So, to say that our system is working just fine now and

1 we shouldn't change it, I really -- I've got to tell you, being
2 a small business owner myself, that's wrong. We need to change
3 that.

4 Secondly, to say that I avoided dealing with the small
5 business community -- my immigrant grandparents came over to
6 this country. They were both small businessmen. I grew up in a
7 small business. I waited tables at my father's restaurant.
8 I've been in two small businesses myself.

9 I'm probably as aware of the problems of small
10 business, and doing business in the State of California, as any
11 of my 13 predecessors as Director of DGS.

12 So, to say I'm not sensitive to small business owners
13 saddens me somewhat.

14 I have set up a Small Business Advisory Council. In
15 fact, Mr. Guerrero and his friends had brought it to my
16 attention that we should be doing some more things.

17 There was a concern. He asked me if I would set it up
18 at that moment. I said, no, I had to think about it.

19 Within two weeks, working my executive staff, I did set
20 in motion the Small Business Advisory Council. Interviews have
21 been made. In fact, Mr. Guerrero was invited to come on out,
22 and we are soon to announce our Small Business Advisory Council.

23 CHAIRMAN LOCKYER: Unless it's substantial, I don't
24 think we should get into a he-said-she-said.

25 MR. GUERRERO: I just wanted to point out that we did
26 ask him to set up a Small Business Advisory Council made up of
27 small business organizations. Rather than do that, one was set
28 up with about nine individuals. I don't know who's going to be

1 on it, but it lacks constituency, and we were looking for
2 something that would represent small business on a broad basis
3 and would meet on a regular basis.

4 That's all.

5 CHAIRMAN LOCKYER: In this domain are these kinds of
6 issues.

7 The one I would want to express concern about, and I
8 expect you simply to restate the Governor's policy, but it's one
9 about which I emphatically disagree, is the elimination of the
10 goals and the Office on Women and Minority Participation.

11 I can't tell you how strongly I disagree with the
12 policy direction of the Governor.

13 You're his appointee. I expect you to probably
14 dutifully follow that and probably believe in it.

15 So, the question in my mind is, whether we should turn
16 you down as a way of expressing our disagreement with the
17 direction that your agency and your boss is going.

18 And I don't know the answer to that yet. I haven't
19 sorted that one out.

20 I'm tempted to vote no for that reason, and it has
21 nothing to do with your qualifications. And then, I guess we'll
22 just do it with whoever they sent over.

23 We won't wait a year next time, so we won't
24 inconvenience people in their private pursuits, as often occurs
25 when you leave home, and all of that, and spend a year in
26 Sacramento, and then get sent somewhere else.

27 But if you want to defend it, or talk about it, please
28 do. I expect that you would say what any loyal appointee would

1 say about the topic when you have such a clear statement from
2 the Governor.

3 He's not my boss, and I disagree. I think it's wrong,
4 and I intend to fight it. Now, whether fighting it should
5 extend to turning down the people who are advocates for that
6 position, I'm not sure yet, but I think it does compel me to do
7 that.

8 Different topic, sir?

9 MR. PARKS: On continuing, my name is Donald Parks. My
10 company is called Information System Services. I'm also
11 President and CEO of Applied Technology Incorporated.

12 CHAIRMAN LOCKYER: Is this the small business issue
13 again?

14 MR. PARKS: Yes.

15 I'm a member of the Disabled Veteran Business Network,
16 and I did write all my own correspondence.

17 CHAIRMAN LOCKYER: I'd like to simplify this by saying,
18 you agree with that same concern that's been expressed?

19 MR. PARKS: Yes, I do.

20 One of the concerns about me, I'm a ten-year military
21 veteran. And I am very much concerned with, and I think it was
22 obvious in terms of Mr. Stamison's experience in the public
23 sector area.

24 I'm a military person. I'm used to rules, regulations,
25 policies and procedures.

26 I've tried to volunteer in trying to make a
27 contribution to Mr. Stamison's role in General Services in
28 things that I saw were discrepancies.

1 For example, the Americans for Disabilities Act, which
2 was supposed to be implemented in 1993, General Services hasn't
3 started yet. And yet, we have a program saying, come on,
4 disabled vets, participate. And then, when you go to
5 participate, saying, we can't accommodate you. This is
6 ludicrous.

7 I'm a member of the President's Committee for the
8 employment of Handicapped. I've worked as a consultant to the
9 Department of Rehab for their technology systems analysis.

10 I have some ideas that I've tried to make
11 contributions. I had to go all the way to the Governor's Office
12 just to get an audience with his staff to present my concerns.

13 You know, I am very much concerned where I do not
14 really see that Mr. Stamison, and the way that the agency has
15 been running, is allowing enough public input, enough public
16 response, enough public involvement.

17 What I hear is, we're going to run this business the
18 way we're going to. This does not sound like a state
19 government.

20 There's something wrong here. There's something, very
21 seriously -- when every communication that I get from the
22 Department has to come through the Legal Office. I mean, I
23 would think that a head of a major agency would have the
24 strength of his convictions to put his signature behind
25 something that he stands for from his department.

26 I'm very much concerned about these things.

27 I've tried to make constructive suggestions on things
28 that were clear violations of law, and try to make comments, and

1 my concern is, I find there's policy being created that says we
2 have discretion to do the policies. And there's no criteria and
3 procedures and standards for application of the things.

4 CHAIRMAN LOCKYER: This is in the bill, you're talking
5 about again?

6 MR. PARKS: This is in my contacts as a vendor, dealing
7 with the Department over the last year.

8 I was in a contract last year where, after I wanted to
9 participate in a bid, and I asked for a copy, they said, oh, you
10 need to get it through a prime contractor. So, I had to
11 assemble a bunch of small businesses that said, we'll
12 collectively participate. Guess what? Addendum One came out
13 and said, no joint bids. They started changing the rules after
14 procedures.

15 And the message I was getting is, small businesses,
16 come back and be a big business and then we'll talk to you.
17 This is very disturbing to me.

18 There's something here that I really don't feel
19 comfortable about. I'm an active participant. I've been a
20 business owner for ten years. I've had international
21 businesses. I used to own the only disabled veteran computer
22 manufacturing service retail business in the whole nation. And
23 the doors are closed on me. This is quite disturbing.

24 CHAIRMAN LOCKYER: Mr. Parks, I think you'd probably
25 agree that it would be unfair to attribute to Mr. Stamison a
26 culture that grew up and preceeded him and is very, very
27 difficult to change.

28 Some of the things you've mentioned are probably the

1 kinds of policies or attitudes that he's mentioned that he hopes
2 to change.

3 And so, you have a forceful presentation to make. And
4 I hope he and his staff took notes about the complaints so that
5 you'll perhaps hear --

6 MR. STAMISON: We have, Senator.

7 CHAIRMAN LOCKYER: -- specific feedback. In fairness
8 to him, I don't want to blame him for something that he didn't
9 have anything to do with, other than the fact that maybe the
10 philosophy, or as it's embodied in the bill proposal or other
11 things, might contribute to disadvantages for small
12 business.

13 MR. PARK: I think the main concern is that Mr.
14 Stamison is doing his job as the Governor appointee. And I'm
15 very much concerned, because there's things that just don't make
16 sense.

17 I think there's a higher responsibility for this
18 Committee to balance out the balance of powers here because --

19 CHAIRMAN LOCKYER: We try to do that, but the Governor
20 wins almost all the fights.

21 Thank you, sir.

22 MR. PARK: Thank you very much.

23 CHAIRMAN LOCKYER: A different issue, anyone at all,
24 other topics.

25 MR. DAVENPORT: Mr. Chairman, thank you. I'm Allen
26 Davenport with the Service Employees International Union. We do
27 have a different issue here, and I want to frame it very
28 carefully, because this is the kind of issue that could go far

1 afield into areas I'm sure many Members of the Committee don't
2 want to be on the Committee for.

3 CHAIRMAN LOCKYER: Could you tell us what it was we
4 wanted to be here for? Or, as John Lewis said, you didn't read
5 me my rights before I got elected to Rules.

6 MR. DAVENPORT: Let me get basically to the point, and
7 then I'll backup here a little bit.

8 This has to do, I think, with Mr. Stamison's
9 responsibility in regard to contract administration, and has to
10 do, particularly in our case, with building services.

11 Specifically, Mr. Stamison has a contractor, his agency
12 has a contract with a company called Compass Building Management
13 to manage the Board of Equalization building at 450 N Street.
14 They have, in turn, contracted with a company called Summers
15 Building Maintenance to do the janitorial services there.

16 Our particular question to Mr. Stamison has to do with
17 whether he is upholding his -- and enforcing his contract with
18 Compass, which says that they will hire a reputable local
19 operator to do the building services.

20 We have -- we had reason to believe that the company
21 there was not reputable, and I've provided the Members of the
22 Committee with a long list of things that they have done or are
23 charged with having done. I don't want to bring all of those
24 cases here, given the hour --

25 CHAIRMAN LOCKYER: Just summarize it.

26 MR. DAVENPORT: To summarize it, they have basically
27 violated with impunity many labor organizing laws, including
28 blatant formation of a company union. These charges have been

1 taken to the National Labor Relations Board, and they have
2 offered to, on occasion, settle these charges and essentially
3 cease and desist. And then most recently, they have been cited
4 again for refusing to live up to their own settlement
5 agreements.

6 Secondarily, they are also -- and there are long list,
7 fifteen specific cases in front of the National Labor Relations
8 Board. In addition, they've had wage and hour violations.
9 Those are in front of the Labor Commissioner and in the Federal
10 Department of Labor. They're in Sacramento Superior Court, or
11 their employees are. They are on a number of assault -- on an
12 assault case, and some of the labor law violations. They've got
13 a sexual harassment case pending. They have workers'
14 compensation problems with the company union that they formed.
15 They have Fair Employment and Housing cases.

16 Again, without going into the details here, the
17 question I would lay before you, and we did lay before them, is,
18 is this a reputable company? And should the Department of
19 General Services continue to let its contractor continue to
20 subcontract with someone who is not reputable.

21 Now, I want to say that we have a letter from the Chief
22 Counsel, dated in December of '95, when we brought the first of
23 these issues to the attention of the Department. We went
24 through channels here, okay, and they said they are not an
25 involved party.

26 On the basis of that, we came to you, Senator Lockyer,
27 and you were kind enough to ask the same question of Legislative
28 Counsel. And Legislative Counsel, upon reviewing the contracts

1 that they had at hand, said that it was perfectly within Mr.
2 Stamison's authority to say to Compass that it doesn't look like
3 that subcontractor is reputable, and perhaps you ought to do
4 something about that.

5 And so, you mentioned earlier in the hearing, and
6 frequently here, about a conflict in philosophy here. There's
7 no question in my mind that this is a matter of discretion for
8 Mr. Stamison to decide whether a company is reputable or not,
9 and whether he wants to enforce a subcontract, a clause about a
10 subcontractor.

11 But we think this company is not reputable. We think
12 that a lot of other people think that they're not reputable,
13 people who are in a position, administrators of various laws,
14 and we would ask you to check and see if there is a values
15 determination here that's important to your vote, and important
16 to how you think this Department ought to be administered.

17 CHAIRMAN LOCKYER: Did you want to comment at all on
18 this issue? You're familiar with it, I assume.

19 MR. STAMISON: This information came to my attention
20 late last week. And I can't say that I've thoroughly studied it
21 to this point in time.

22 I am aware that there are some major issues that the
23 union has with Summers. That's before the NLRB in May, and at
24 that point in time, they'll make a decision. They'll make our
25 course very clear.

26 CHAIRMAN LOCKYER: Well, I note that you were appointed
27 on April 28 of last year, and on the third of May, Equalizer
28 Klehs, Commissioner -- what is their title, Commissioner?

1 Anyhow, the member of the Board of Equalization, Klehs, wrote a
2 letter a few days after the appointment saying, hey, we seem to
3 have a problem, and would you review this.

4 Well, it's a year later, and I guess the legal staff
5 rendered some opinion.

6 MR. STAMISON: And we did respond, and there were some
7 discrepancies on the prevailing wage. And that was corrected,
8 so we did enforce that. And in our Buildings and Grounds Office
9 has been auditing and monitoring the progress.

10 CHAIRMAN LOCKYER: All right. Hopefully, then, we'll
11 hear more from you --

12 MR. STAMISON: Yes, absolutely, Senator.

13 CHAIRMAN LOCKYER: -- about what would be appropriate
14 in future relationships under this contract, if there's new
15 information available.

16 MR. STAMISON: By all means.

17 CHAIRMAN LOCKYER: We'll ask that they make sure to
18 give you any information you may not have seen last week.

19 Were there others present? Did everyone testify that
20 wished to.

21 SENATOR BEVERLY: Mr. Johnson, I've been waiting all
22 afternoon.

23 MR. JOHNSON: Mr. Chairman, Members of the Committee, I
24 met Peter Stamison about a year ago.

25 CHAIRMAN LOCKYER: You have to identify yourself.

26 MR. JOHNSON: I'm Eppie Johnson. I'm Chairman of
27 Eppie's Restaurants, past President of the California Restaurant
28 Association, Director of the California State Insurance

1 Compensation Fund.

2 I met Peter about a year ago. I was very impressed. I
3 said to myself, a guy with your qualifications, what are you
4 doing taking a job like this? I mean, evidently the Governor
5 went to an executive search firm to find a person with lots of
6 ability, energy, and qualifications to be able to take over the
7 General Services administration, and be able to modernize it,
8 and possibly save some money in running the organization.

9 Needless to say, the restaurant business hasn't been
10 the best. My company hasn't made any money for the past three
11 years. So, what we're trying to do is try to be able to cut
12 down our expenses, even though the good Senator eats there very
13 often. One of my best customers, by the way.

14 CHAIRMAN LOCKYER: Me, too.

15 MR. JOHNSON: One point I want to bring up. The key
16 is, we have a highly qualified person that the Governor
17 appointed to this position.

18 Now, I know when I hire a person in a top job, he gets
19 a certain mission; he gets certain charges. There are certain
20 things you've got to do. And whether the public likes it or
21 not, if that individual accepts the job, he has to accept the
22 charge, whatever it might be.

23 So, you as the Chairman, and some of the Committee
24 Members may not believe in what the Governor wants to accomplish
25 as far as affirmative action.

26 I want you to know, I'm a very conservative Democrat,
27 by the way, okay.

28 And the point is, though, I don't think we're

1 accomplishing anything if we're trying to pass a message on to
2 the Governor saying, we don't care for your policies, Mr.
3 Governor. As a result, we're not going to confirm the
4 appointment of this gentleman here who's very highly qualified.

5 What it does is, it puts the Department in chaos for
6 another five or six months, until someone else is found. Just
7 like me, when my president resigned, it took me three months to
8 find a new president. Let me tell you, things went to hell in
9 those three months. Things just don't go along without an
10 executive.

11 So, the point I'm trying to say is, whatever's got to
12 be fixed should be fixed. If this bill is a bill that you don't
13 care for, then that should be fixed when that bill goes on
14 through.

15 What I'm saying is, it doesn't make business sense to
16 be able to take a man of his qualifications, and by denying him
17 confirmation, pass a message on to the Governor.

18 The only way we're going to make things work in
19 California is by cutting our expenses. I mean, Senator Petris
20 said, well, the situation of all the smog in the Los Angeles
21 Basin, let me tell you, business has gone to hell.

22 We've lost our defense, yes, but we've lost other
23 things. I hear more people, young men in their thirties, say to
24 me, it's tough trying to be in business; it's very difficult.

25 We're over regulated. So, if we can find some way that
26 we can cut down the regulations, streamline things, cut down the
27 burden, it's going to help all the people in the State of
28 California.

1 I became a Director of the State Compensation Insurance
2 Fund because I felt possibly we might be able to do something as
3 far as workmen's compensation reform. That happened. It was a
4 tough battle. It took about seven years, both sides. And what
5 it's done is, kept a lot of small businesses in business.

6 CHAIRMAN LOCKYER: Should we privatize that?

7 MR. JOHNSON: I think it's ridiculous.

8 CHAIRMAN LOCKYER: Keep it the way it is?

9 MR. JOHNSON: What the Governor doesn't understand, I
10 think, is the fact that if they sell State Fund, if there's any
11 profit -- there'll be very little -- that goes to the policy
12 holders. I think he didn't understand that.

13 You need State Fund because we're like the insurance
14 company of last resort. We insure 270,000 policy holders, and
15 most policy holders who can't get an insurance policy, they come
16 to us.

17 CHAIRMAN LOCKYER: I'm sorry, I didn't want to get you
18 off on another topic.

19 MR. JOHNSON: Let me tell you, Peter Stamison is a
20 highly high qualified person. I'm very impressed by his
21 qualifications, and there's other ways to pass the message on to
22 the Governor. You have some problems with the minorities and
23 the disabled, but I think you could very well solve this one.

24 CHAIRMAN LOCKYER: Thank you, Mr. Johnson. Thank you
25 for waiting so long.

26 Other questions from Members at all? Let's see, it's
27 Monday night. What's the soup, Eppie?

28 Other questions from Members?

1 Did you want to add anything?

2 What I'm going to suggest we do is, since we don't have
3 an immediate deadline, to just take all the information and
4 testimony, ask the questions, and ask the staff to follow-up
5 with your staff so that we can have some answers to the
6 questions that have been posed. And then we'll vote on some
7 subsequent date.

8 You've been very forthcoming. There's no question
9 about your lengthy and significant experience in business
10 management. So, let's see if we can figure out a couple of
11 these remaining matters that maybe will make everyone
12 comfortable with going forward.

13 Next week, hopefully that'll be fast enough, even with
14 General Services.

15 SENATOR PETRIS: What's the deadline?

16 CHAIRMAN LOCKYER: May 1.

17 MS. MICHEL: And we're not meeting on April 27.

18 CHAIRMAN LOCKYER: We could schedule a meeting if we
19 had to.

20 Anyhow, we'll figure out the schedule, but thank you
21 very much.

22 MR. STAMISON: Thank you.

23 [Thereupon. This portion of the
24 Senate Rules Committee hearing was
25 terminated at approximately 5:17 P.M.]

26 --ooOoo--
27
28

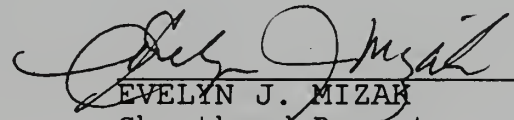
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of April, 1996.


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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DANIEL G. PENNINGTON, Member
California Integrated Waste Management Board

CHERYL K. PLILER, Warden
California Correctional Center, Susanville
Department of Corrections

MICHAEL B. STOKER, Chairman
California Agricultural Labor Relations Board

PETER G. STAMISON, Director
Department of General Services

ALLEN DAVENPORT
Service Employees International Union

STEVEN A. OLSEN, Chief Deputy
Department of General Services

SENATOR DAN BOATWRIGHT

JIM RAMOS, Coordinator
Disabled Veterans Business Enterprise Network

BERT BROCK
Small Business Owner

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Pennington?

MR. PENNINGTON: Hi, Senator. I have some statements here, if you would like.

CHAIRMAN LOCKYER: Leave them there and the sergeant will pass them out.

Did you want to start with your statement?

MR. PENNINGTON: That'd be fine, if that's all right with you, Senator.

CHAIRMAN LOCKYER: All right.

MR. PENNINGTON: Thank you very much, Mr. Chairman, distinguished Members of the Rules Committee.

I'm Daniel G. Pennington, and I'm honored to be here today as the Governor's nominee for California Integrated Waste Management Board. And I appreciate this opportunity to discuss my credentials with your committee.

It seems somehow fitting that I should appear before you on Earth Day which is being celebrated throughout the state, and which our Board is actively involved.

I believe my contribution to the Board comes in great part from my experience in environmental issues and economic development. While representing several trades associations in Washington, D.C., I played a role in shaping amendments to the Clean Air Act, the Clean Water Act, the Natural Resource Recovery Act, the predecessor to the Resource Conservation and Recovery Act.

My experience in the developing of these laws

1 solidified my strong personal belief that for any issue, an
2 environmental and economic balance can be achieved.

3 While working for the Rubber Manufacturers Association
4 in Washington, I chaired their Environmental Committee, where I
5 helped to bring considerable attention to the health, safety,
6 and the environmental impacts posed by waste tires.

7 In California state government, I worked for the
8 California State Fairs and Expositions and at the California
9 Department of Housing and Community Development. During my four
10 years assignment as Director of Marketing at the State Fair, I
11 helped to increase Fair attendance and develop programs that
12 doubled nonfair program income.

13 At the Department of Housing and Community Development,
14 I served first as Chief, Division of Community Affairs, where I
15 directed a portfolio of 32 different low-income housing
16 programs. I then served as the Department's liaison to the
17 Century Freeway Housing Program, responsible for developing
18 replacement housing for those displaced by the construction of
19 the freeway.

20 While at the Waste Board, I have worked to put both my
21 environmental knowledge and my market expertise to good use.
22 And I believe my range of experience has enabled me to bring a
23 brand of leadership to the Board necessary to help us achieve
24 true integrated waste management. And integrated is the key
25 word here.

26 In establishing our 25 and 50 percent statewide
27 diversion goals, AB 939 set up a hierarchy of methods to achieve
28 these goals, source reduction, recycling and composting, and

1 environmentally safe disposal and transformation. In the most
2 important sense, integrated refers to synergy between the
3 elements of the hierarchy as we set policy and implement our
4 programs.

5 For instance, we see how diversion offers the benefit
6 of resource conservation, but we derive from it expanded
7 landfill capacity as well. And when we successfully enact
8 regulatory reform, the relief derived [sic] to the industry is
9 complemented by boosts to diversion. Making all of these
10 activities function in harmony is the driving challenge of
11 integrated waste management for our Board, and we've embraced
12 that challenge with enthusiasm.

13 Integration is something that's also reflected by my
14 management style. Upon being elected as the Board Chairman, and
15 soon after, in a personal letter to my colleagues on the Board,
16 which I have provided to you, I expressed my vision for the
17 Board and the working partnership among Board members. My
18 approach to this job has been to listen to all sides, balance
19 the interests involved, and vote not by politics, but by policy
20 and principle.

21 I believe this approach has helped forge a working
22 partnership among the Board's members and those affected by the
23 Board's work. And I believe that that's been a pivotal factor
24 in our success.

25 We're proud of our success in delivering regulatory
26 relief, reducing costs, and empowering local government, all
27 while maintaining high standards of protection for California's
28 people and resources.

1 As the Board's Chairman, one policy area in particular,
2 I believe, will be central to any future success for the Board
3 and for integrated waste management in California, is market
4 development. As the Board's upcoming annual report clearly
5 states, all the good intentions and great ideas to spur
6 reduction, reuse, and recycling of waste are for naught if there
7 are not sufficient markets for secondary materials.

8 To date, we've done a pretty good job of stimulating
9 markets. Our programs have spurred the development of new
10 recycled businesses, created and saved hundreds of jobs, and
11 account for more than a million-and-a-half tons of waste
12 diverted annually from landfills for reuse.

13 In the future, I hope to lead Board efforts in market
14 development and especially in developing markets for compost.
15 Because it's a largely untapped market, and because yard waste
16 is the single largest component of California's waste stream by
17 any account, developing long-term markets for compost and other
18 post-consumer materials will be essential to achieving 50
19 percent.

20 Again, I want to thank the Committee for its time and
21 consideration. I will be happy to answer the questions you may
22 have.

23 CHAIRMAN LOCKYER: Okay, Senator Petris.

24 SENATOR PETRIS: I have a mailer here that was sent out
25 in Senator Sher's district. I'm going to ask if you're familiar
26 with it. Maybe you can tell from the cover.

27 MR. PENNINGTON: Yes, sir, I am.

28 SENATOR PETRIS: My information is that research for

1 the mailer was done by a company called the Capital Group. Are
2 you familiar with that?

3 MR. PENNINGTON: Yes, I am.

4 SENATOR PETRIS: According to their official records,
5 filed in the County of Sacramento and the FPCC, this company's
6 comprised of three individuals, one of whom works for the Waste
7 Board.

8 We're told that the company and the staffer does
9 research and writing for Republican candidates and is consulting
10 on the Lungren gubernatorial campaign.

11 I don't have a problem with that, except if it
12 interferes with the work of a staffer working for you.

13 Is it true that you've requested that this individual
14 be placed on your staff to do research and speech writing? You
15 made such a request?

16 MR. PENNINGTON: I have not requested it. I have
17 looked at the possibility of adding a second staff person to my
18 personal staff. The Chairman gets a great deal of
19 correspondence. I've been asked to make a lot more of
20 appearances, and the workload is greater.

21 I have looked into, but have not decided yet whether
22 that's an appropriate thing to do;

23 This staff person was one who would be in consideration
24 for it, at least was.

25 I have not made any decisions in terms of that yet. I
26 want to look at what adding that position would do to our
27 budget. I want to see what it would do to our staff. I'm
28 interested that this is not taking a staff person, but it's

1 really reassignment of a staff person.

2 But yes, he was under consideration, yes, sir.

3 SENATOR PETRIS: Well, I suggest to you one other
4 factor you may want to take into consideration.

5 If this person we're talking about is the one who wrote
6 this stuff, you should be concerned about adding immeasurably
7 to our blood pressure, starting with mine. I don't speak for
8 other Members.

9 MR. PENNINGTON: I might say that I have talked to the
10 staff person about it, and he has provided me with a letter he
11 had recused himself from this account, that he was not involved
12 in it.

13 And also, there is a San Jose Mercury News
14 investigation, article, that shows that they did not uncover
15 this material that was used in that mailer. I don't know where
16 that material came from, but the article in the Mercury News
17 indicated that they did not uncover it.

18 SENATOR PETRIS: The Mercury News called it totally
19 false.

20 MR. PENNINGTON: Correct.

21 SENATOR PETRIS: And the Sacramento Bee said it's full
22 of lies and distortions.

23 MR. PENNINGTON: Right. It is a very objectionable
24 piece. I might add that I object to hit pieces, too. I think
25 there should be a higher level of politics than that.

26 SENATOR PETRIS: You're expressing the hope that he's
27 not the one applying for the position you had in mind? Is that
28 what you said?

1 MR. PENNINGTON: Uh --

2 SENATOR PETRIS: Maybe I overstated it.

3 Withdraw the question, your Honor.

4 CHAIRMAN LOCKYER: Did you want to ask anything else,
5 Senator, or should I ask other Members?

6 SENATOR PETRIS: Maybe I can come back to it.

7 CHAIRMAN LOCKYER: Other comments or questions from
8 Members.

9 I guess the one I would ask you about initially is just
10 to reflect on the benefits and maybe nonbenefits of the proposal
11 to combine the Integrated Waste Management and Toxic Substances
12 Control.

13 Have you had a chance to reflect on that?

14 MR. PENNINGTON: Well, actually, Senator, I learned
15 about it at about the same time you did. To my knowledge --

16 CHAIRMAN LOCKYER: From the newspaper.

17 MR. PENNINGTON: To my knowledge, what it calls for is
18 for the Secretary of Cal-EPA to develop a plan for the '97-98
19 budget. To my knowledge, there is no plan developed at this
20 point.

21 I would certainly hope that any plan that is developed,
22 that they would have me participate in.

23 I certainly would say that I would not be before you
24 today if I didn't believe that the Board has done a good job in
25 carrying out its missions, and that it is capable of doing
26 that.

27 But a decision to merge them, certainly it never hurts
28 to look, but that decision is certainly going to be made by the

1 Governor and the Legislature, and whatever decision is made, I
2 will faithfully carry out.

3 CHAIRMAN LOCKYER: If you want to express any opinion
4 about the merits, or lack thereof, with regard to consolidation,
5 this is an okay time and place to do that. If you don't care
6 to, that's okay, too.

7 MR. PENNINGTON: Thank you, Senator.

8 CHAIRMAN LOCKYER: Senator Ayala.

9 SENATOR AYALA: Yes, AB 939.

10 MR. PENNINGTON: Yes, sir.

11 SENATOR AYALA: Is that working the way we expected it
12 to? Is it premature to say it? If it's not working, why isn't
13 it?

14 MR. PENNINGTON: No, sir, I think it is working well,
15 the way it was intended to work. We're on the threshold of
16 achieving the '95 goal. We think we've reached that. The final
17 reports will be to us the first of August, but statewide, we
18 believe that we have diverted by 25 percent, and we have created
19 a lot of new markets for recycleable materials.

20 So yes, we feel very comfortable that it is doing what
21 was intended, and we intend to achieve 50 percent by the year
22 2000.

23 SENATOR AYALA: Should wine and liquor bottles be added
24 to the materials subject to the bottle bill?

25 MR. PENNINGTON: You know, that is under the purview of
26 the Department of Conservation, and the Division of Recycling.

27 I'm not sure that, you know, I've really taken a real
28 strong look at that.

1 SENATOR AYALA: It doesn't come under your
2 jurisdiction?

3 MR. PENNINGTON: No, sir, it does not. It's the
4 Department of Conservation and the Division of Recycling.

5 SENATOR AYALA: Thank you.

6 MR. PENNINGTON: Thank you.

7 CHAIRMAN LOCKYER: I guess relevant to the question of
8 whether we ought to combine things or not is whether there's a
9 value in the independent status of certain commissions.

10 I personally think there is benefit in that structure,
11 but on occasion, it appears that the practices may eliminate or
12 erode the independence of some of the bodies that are at least
13 technically called independent.

14 The example I would cite, and I don't know if this
15 happened during your tenure, and you might reflect on it with
16 us, there was a requirement under a bill by Assemblymember
17 Eastin that the Board report on whatever state procurement
18 practices were being developed to expand recycled content in
19 state purchases.

20 As I understand it, the Board had a report, and EPA
21 said, you can't issue that report. We insist on a variety of
22 changes and amendments. And the Board made the changes.

23 It kind of raises questions about how independent are
24 they when some other agency is able to do that to them.

25 Was that during your time?

26 MR. PENNINGTON: No, sir. I don't recall that.

27 However, I would say that recently, I sent a letter, a
28 joint letter with, in fact, a Senate Member, to all the

1 departments and agencies suggesting that some of them were not
2 in compliance and that they needed to be in compliance.

3 CHAIRMAN LOCKYER: So, you were trying to speed up
4 that?

5 MR. PENNINGTON: Yes, sir.

6 CHAIRMAN LOCKYER: I note that there's a long list of
7 supporters in our file, some of whom are present. I don't know
8 that we need to take testimony, unless there are opponents
9 present, or people that want to express concerns.

10 Do we have any in that variety today.

11 Hearing none, maybe if people want to be acknowledged
12 as supporters, if you want to just stand so that maybe you'll be
13 the one that should turn around to see who stands up.

14 MR. PENNINGTON: Thank you, sir.

15 They're not all my staff, either.

16 CHAIRMAN LOCKYER: What's the pleasure of the
17 Committee?

18 SENATOR BEVERLY: Move we recommend confirmation.

19 CHAIRMAN LOCKYER: We have a motion to confirm. Call
20 the roll.

21 SECRETARY WEBB: Senator Ayala. Senator Lewis.

22 SENATOR LEWIS: Aye.

23 SECRETARY WEBB: Lewis Aye. Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye. Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

28 CHAIRMAN LOCKYER: Aye.

1 SECRETARY WEBB: Lockyer Aye.

2 CHAIRMAN LOCKYER: Let's leave it on call so Senator
3 Ayala can records.

4 Thank you, sir. Good luck.

5 MR. PENNINGTON: Thank you, Senator. I also would like
6 to thank Ms. Michel in all her help in getting through this
7 process.

8 CHAIRMAN LOCKYER: Just keep trying to do a thorough
9 and fair job.

10 MR. PENNINGTON: We'll do that, Senator. Thank you.

11 CHAIRMAN LOCKYER: Warden Pliler is our next person. I
12 don't know if I said that right. Come on up. We'll get you a
13 different cup of water.

14 Did you want to start with any comments?

15 MS. PLILER: Yes, I'd like to thank you, Mr. Chairman
16 and Members of the Committee. This is my mother.

17 CHAIRMAN LOCKYER: Your mother should take your
18 picture. Go ahead.

19 MS. PLILER: Thank you, Mr. Chairman, Members of the
20 Committee, and Ms. Michel and staff of the Committee.

21 I began my career with the Department of Corrections in
22 1968 at the California Correctional Center in Susanville. Since
23 that time, I've had the opportunity of working at nine different
24 institutions in a variety of capacities. I've also been
25 assigned as a staff services manager, senior investigator, and
26 deputy commissioner for the Board of Prison Terms.

27 In these various roles, I have become knowledgeable and
28 proficient with regard to dealing with adult felons, from

1 sentencing to incarceration, program, parole, discharge, and in
2 some cases, clemency and pardon.

3 I've been involved in prison supervisory and managerial
4 roles for over 20 years, and was closely involved in the
5 activations of three new prisons: California State Prison,
6 Sacramento County, as the classification and parole
7 representative; Avenal State Prison as Associate Warden; and
8 North Kern State Prison at Delano as Chief Deputy Warden.

9 My varied experience in state service has served me
10 well in terms of effective management of prison programs and
11 budget, and implementing sound custodial, fiscal, and personnel
12 practices.

13 I believe that to maintain a safe, secure and humane
14 institutional environment, the Warden must lead by example. To
15 help accomplish this goal, I have set policies in place to
16 maintain open lines of communication between both staff and
17 inmates, be responsive to concerns, initiate corrective action
18 when needed, and treat those with whom I have contact with
19 dignity and respect.

20 Throughout my career, I feel I have contributed to the
21 management and development of the Department of Corrections in a
22 positive fashion. I would like to devote the remainder of my
23 career toward continued professionalism in the field of
24 Corrections.

25 Thank you.

26 CHAIRMAN LOCKYER: How did you adjust to climate change
27 between North Kern and Susanville?

28 MS. PLILER: It was difficult, but I'm now very

1 proficient with four-wheel-drive vehicles.

2 CHAIRMAN LOCKYER: This is always mostly an opportunity
3 for us to learn something about the programs and policies, as
4 well as the individual that has the responsibility of
5 implementing them.

6 There's been a lot of controversy about work programs
7 for inmates, or educational programs. What have you seen of
8 those? What have you learned about them? Are there ways to
9 improve them that we ought to know about?

10 MS. PLILER: All of the institutions where I've had
11 experience, and more specifically this institution, because it
12 is a minimum to medium facility for most part, we have
13 exhaustive educational and vocational programs.

14 I have 25 separate vocational programs in various
15 areas, 12 separate educational academic programs. We're heavily
16 involved with the literacy support program. We use inmate
17 tutors for peer tutoring, and we have about 250 inmates a week
18 just involved in that program.

19 As the world of technology becomes more advanced, we've
20 become involved with the computer age and renovating computers
21 for schools. Anything to give --

22 CHAIRMAN LOCKYER: Is there a waiting list?

23 MS. PLILER: Always.

24 CHAIRMAN LOCKYER: How many people?

25 MS. PLILER: Right now, for our vocational program, out
26 of my population, we have 118 men on the vocational waiting
27 list, and 127 men waiting for academic and English as a Second
28 Language.

1 CHAIRMAN LOCKYER: How many are in a program?

2 MS. PLILER: My population is at almost 5,000, and I
3 have 3200 in programs.

4 CHAIRMAN LOCKYER: Thirty-two hundred?

5 MS. PLILER: Including the camp program.

6 CHAIRMAN LOCKYER: How many are in camp?

7 MS. PLILER: 1850, divided into 16 northern camps.

8 CHAIRMAN LOCKYER: What's your experience been with
9 overtime costs? Are they significant?

10 MS. PLILER: Overtime cost can be significant if you
11 don't monitor it closely. They were escalated, and we've put
12 some measures in place to restrict that.

13 CHAIRMAN LOCKYER: What did you do?

14 MS. PLILER: One of the things that we did, I discussed
15 with CCPOA methods of bringing down overtime costs, sick call
16 ins, those types of things. We had correctional officers
17 calling directly in to the Watch Commander, as opposed to
18 another officer or sergeant.

19 We did this for one quarter, and it dramatically
20 reduced our sick call ins, consequently, our overtime.

21 We dropped it at the end of the first quarter to see if
22 we would maintain the same level, and we have. Staff have
23 worked real hard to bring down the overtime.

24 We also make extensive use of permanent intermittent
25 employees at straight time as opposed to paying time-and-a-half
26 to full-time individuals.

27 CHAIRMAN LOCKYER: Can you quantify it, just sort of a
28 rough number, as to how much of your personnel expenditures

1 might have been overtime before you instituted some of the
2 changes?

3 MS. PLILER: I had a study done on the last eight
4 quarters.

5 CHAIRMAN LOCKYER: Okay.

6 MS. PLILER: The percentage was running at about seven
7 percent of my personnel services budget for overtime. It's now
8 down to 4.2 percent, which is significant dollars.

9 CHAIRMAN LOCKYER: Other questions from Members at
10 all.

11 What's been the most difficult problem you've had to
12 deal with during your tenure here as Warden?

13 MS. PLILER: Mr. Merkle was the previous Warden, and he
14 had been there since 1979. He's widely respected, did a
15 wonderful job, and I think it was difficult -- transition in
16 management is always difficult, but it was even more difficult.
17 He's a legend in his own time, and fortunately he's still
18 available. I consult with him often.

19 So that was difficult initially, but in terms of the
20 job, probably personnel actions, and dealing with staff who've
21 experienced some negative behavior. It's very difficult.

22 CHAIRMAN LOCKYER: Do you have any thoughts on the
23 efforts to eliminate illegal drugs in the prison setting.

24 There are some that suggest visitation should always be
25 behind glass, and different ways to address that. What are your
26 thoughts about the subject?

27 MS. PLILER: Visitation occurring always behind glass
28 I'm not sure is the total answer to this problem. I also find

1 it with a lot of --

2 CHAIRMAN LOCKYER: Would that be a part answer or no?

3 MS. PLILER: With some inmates, I think it may be an
4 answer, and those can be specifically identified.

5 As general rule, I would say probably not. It adds to
6 some inhumanity on the part of individuals who are working and
7 programming.

8 I'd like to say, you know, that it never happens, but
9 realistically it does. It happens everywhere. Drugs come in
10 sometimes through visits, sometimes through packages, sometimes
11 even from vendor packages.

12 We've placed a lot of interdiction programs in place.
13 We've used canines. We continue to use canines, searches of
14 packages, searches of mail. You find -- you know, you can find
15 things under stamps, in the seals of envelopes, actually
16 absorbed straight into a certain type of recycled paper, and you
17 need to field test it, which we do.

18 And we also have those inmates who don't want to become
19 involved in the narcotics trafficking in the institution, who
20 sometimes let us know that we may want to look certain places,
21 which we do. More often than not, we find narcotics.

22 CHAIRMAN LOCKYER: Additional questions.

23 We don't have opposition in the file.

24 Let me just ask if there's anyone present who wishes to
25 express opposition or concerns? If not, I think the Beverly
26 motion is probably timely.

27 SENATOR BEVERLY: Move we recommend confirmation.

28 CHAIRMAN LOCKYER: We have that motion. Call the roll.

1 SECRETARY WEBB: Senator Ayala. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye.

10 CHAIRMAN LOCKYER: Let's leave it on call for Senator
11 Ayala.

12 Good luck.

13 MS. PLILER: Thank you so much.

14 CHAIRMAN LOCKYER: Mr. Stoker, ALRB. Do you want to
15 start with any comments?

16 MR. STOKER: Thank you, Mr. Chairman.

17 First I'd like to thank you and the honorable board
18 members, Committee Members, for inviting me here today. I'll
19 keep my comments very, very brief.

20 I would like to share with the Committee some of the
21 things that I think I've brought to the agency that provides a
22 positive, perhaps different perspective that the agency had in
23 the past, but I think has created for a more open agency in
24 working with the interested parties.

25 The first thing that has been a strong commitment of
26 mine, it's something I was always committed to in my days as a
27 Supervisor from Santa Barbara County, is being open, accessible
28 to everybody. I think the reputation I've earned, hopefully,

1 amongst all interested parties that deal with the Agricultural
2 Labor Relations Board is that they know that my door is always
3 open; I will listen to anybody, and that's something that I
4 think, perhaps, that agency hasn't been as open and available to
5 everybody in the past as it could have and should have.

6 There's certainly times that you have legal conflicts
7 of interest, that you can't discuss things in an ex parte way,
8 but if there is not the restraint of ex parte communications, I
9 return every -- I'll return phone calls, no matter who it is.
10 And if I can't address or speak to something, I'll let them know
11 that. And I think that's something that's opened up the chain
12 of dialogue between the Board as an institution and interested
13 parties that deal with the ALRB.

14 The second area, that I think is something that is a
15 very positive aspect that I've been working hard towards, is
16 assuring that the General Counsel's side of the agency and the
17 Board's side of the agency work hand in hand.

18 I think in the past, perhaps under the same -- the same
19 reasons of legal conflict of interest, the two sides have used
20 that, I don't want to say as an excuse, but it has been used as
21 a reason for not having what I would call the best of
22 communications.

23 Again, my philosophy is that any time the General
24 Counsel's side and the Board's side can be talking to each
25 other, we should be. And I think as a result of that, that the
26 dialogue's been much greater than it's been in the past. We're
27 able to work out a lot of problems that, perhaps, wouldn't have
28 been worked out.

1 All too often when you talk about things, whether it's
2 how to get field inspectors out in the Salinas office, or
3 whether it's dealing with resources and where they should be
4 spent up here in Sacramento on the administrative side, when
5 we're talking together, we're able to solve the problems much
6 easier.

7 And I think credit deserves to go out to our General
8 Counsel that was appointed about a month after me, Paul
9 Richardson. He ~~have~~ comes from county government. He was a
10 district attorney in Placer County. I think he probably has a
11 lot of the same kind of prospectives that I have in terms of
12 that openness and accessibility, which is why we're working so
13 well together.

14 Finally, the last area that I would like to indicate to
15 the Committee is something that I think is somewhat of a new
16 approach, potentially, or a new perspective, and it's something
17 I'm very, very strongly committed to, is seeing the agency
18 become more of a facilitator in promulgating settlements in
19 bilateral way.

20 In the past, the agency has stayed away from involving
21 themselves. Again, there's legal things that we cannot involve
22 ourselves in because we ultimately may have to be the decider of
23 the issue that comes before us. But on the other hand, there's
24 a lot of things that we can make ourselves available to help
25 parties to reach a bilateral settlement.

26 I frankly, within the agency, I've let it be known that
27 maybe one of the best ways to measure our success in years to
28 come is not necessarily how many elections there have been in an

1 annual year, but how many settlements that parties bilaterally
2 have come to a mutual consensus.

3 I'll throw out a for instance, many of you probably
4 have read recently of discussions involving the United Farm
5 Workers and Bruce Church. Some newspaper accounts erroneously
6 reported that there was a settlement in that case. There
7 wasn't, but are there are discussions and those parties now from
8 my myself, personally, on the Board's side up here in
9 Sacramento, and from the regional offices that are involved, in
10 this case it's El Centro, that our agency will do everything
11 within the parameters of the law to help the parties come to a
12 bilateral settlement, and to basically make sure -- our role is
13 that if settlement comes to us that the parties agree to, as
14 long as it meets the spirit of the law that the Legislature has
15 passed, that we encourage bilateral settlements.

16 So, I think you're going to see a lot more of that in
17 the months and years to come. We've let that word get out.

18 Something that I discussed, and I intend to be looking
19 at and exploring in workshops probably next fall, is potentially
20 training administrative law judges in settlement judge courses.
21 That is something the NLRB is currently looking at, so that
22 those ALJs can take that kind of what I would call a
23 constructive, positive role in helping parties to reach a
24 bilateral agreement.

25 I just wanted to share some of the things that I'd like
26 to think are perspectives I've brought to the agency since I've
27 been there. It's been -- I've been proud to serve. I am
28 hopeful of continuing with the perspectives that I have

1 discussed with you today, and I would look forward to working
2 with this agency in the years to come and finish up my term.

3 I want to thank you again for allowing me to come
4 before you this afternoon. If you have any questions, I'd be
5 more than happy to answer them at this time.

6 CHAIRMAN LOCKYER: How does this work compared to being
7 on the Board of Supervisors?

8 MR. STOKER: Well, I don't have to worry about pot
9 holes in the street, and why the sheriff didn't respond on
10 time.

11 One of the things that I've gone to great lengths to
12 make sure this Board does not do is become policy makers. One
13 of the first things I had before me when I came on the Board was
14 some rule making issues, of which the Governor's Office, many of
15 the union groups, Members of the Legislature, and many of the
16 growers had all trouble with some of the things that were being
17 potentially promulgated in terms of the rule making, and the
18 argument was, it was going beyond really what our discretion,
19 and was entering into an area without a policy.

20 I think that's the biggest difference, Mr. Chairman. I
21 enjoyed my role as a policy maker at a local level. I'm
22 enjoying my role in a quasi-judicial level, of which I'm one of
23 those that believe in exercising judicial restraint, and it's up
24 to the Legislature to write the law and tell us what the law is.
25 And for us, when we issue our Board rulings, to enforce that law.

26 CHAIRMAN LOCKYER: So that general controversy, of
27 trying to do by regulation what wasn't in the law, is all behind
28 us now, do you think?

1 MR. STOKER: I would like -- you always have, I
2 imagine, subject to interpretation, what exactly -- sometimes
3 there's clear areas of the law that I think is very clear. It's
4 something that's not subject to discretion, and I think that's
5 behind it.

6 I think areas that are always subject to discretion,
7 reasonable people can disagree. And I'm one of those that
8 will -- in fact, many of the Board rulings I've authored, I
9 have no problem saying that this is something that's up to the
10 Legislature to decide. If people want to see changes, that's
11 something the Legislature needs to address, but it's not
12 appropriate for the Board to deal with that, either in rule
13 making or by our authority by issuing Board decisions.

14 CHAIRMAN LOCKYER: I guess one of the issues that may
15 have been resolved by the Supreme Court, I believe, there was an
16 action brought against, I assume, the Farm Workers Union -- it
17 was a union -- relative to the grape boycott. And there was one
18 initial determination which was reversed eventually on appeal,
19 and the Supreme Court refused to hear that matter, which I
20 suppose means that's settled for the time.

21 MR. STOKER: Mr. Chairman, I think you're referring to
22 the Table Grape Commission case.

23 CHAIRMAN LOCKYER: Yes.

24 MR. STOKER: That's an issue -- two issues basically
25 where the Board found the secondary boycott, and also found for
26 damages.

27 There was an issue in regards to whether the Table
28 Grape Commission had standing to bring that case, and the court

1 basically said no -- the Court of Appeals said no. The Supreme
2 Court did not take the case up on review.

3 I would imagine the only area now -- the jurisdictional
4 issues and the standing issue was clear. The only area that I
5 could see that is subject to debate and discussion is whether or
6 not the Board potentially has the ability to award damages in a
7 case like this. Based on that case, clearly no, because the
8 Table Grape Commission didn't have the standing, so the damages
9 were therefore not appropriate.

10 I think that probably the attorneys in the interested
11 communities would clearly read the Court of Appeal cases two
12 ways in regards to whether it limits the ability of the Board
13 altogether to award damages, or whether it was limited to that
14 one case as a result of the standing case, Mr. Chairman.

15 CHAIRMAN LOCKYER: Finally, there's a question as to
16 the appropriateness or willingness to enjoin illegal activities
17 pending some adequate investigation.

18 I guess this came up a few years ago, where there was a
19 table grape grower that basically discharged all of the
20 employees during an organizing election period. The ALRB
21 actually sought an injunction to freeze the situation until the
22 election was conducted, and a decision made about the
23 appropriateness or legality of the firing.

24 Does that ring any bells?

25 MR. STOKER: Mr. Chairman, it really doesn't. That was
26 before my time.

27 The one thing, as you know, that we have under
28 California law that the National Labor Relations Board doesn't

1 under the National Labor Relations Act is the make whole
2 remedy. So, in theory, if there's an unfair labor practice
3 that's committed by an employer, in theory there's monetary
4 damages that are out there, in theory, to make an individual
5 whole if somebody commits an unfair labor practice under the
6 Act.

7 CHAIRMAN LOCKYER: This was a secondary boycott
8 dispute, which, of course, is also a difference.

9 MR. STOKER: Absolutely.

10 CHAIRMAN LOCKYER: Not being part of the National Labor
11 Board rules, that's become a legal tactic, whether it's wise or
12 not is a different matter.

13 Are there Members of the Committee that wish to pose
14 any questions? Yes, Senator.

15 SENATOR PETRIS: I have one that's pretty much along
16 the same subject, where you have a real bad case, at least from
17 my viewpoint, of discrimination by seeking affirmative
18 injunction in the local superior court on the part of the
19 employer.

20 For example, if there's an organizing campaign under
21 way, let's say the strawberry pickers have an organizing
22 campaign, and the owner fires the whole crew because they
23 supported the efforts to unionize.

24 Now, in order to enforce the law, an immediate
25 injunction would be required, ordering the employer to rehire,
26 reinstate those workers -- that's the present law, as I
27 understand it. Pending the resolution of the charges by the
28 ALRB, they'd be required to reinstate those workers that had

1 been fired solely because of participation in an union
2 organizing activity.

3 Now, I'm concerned, because you can see the impact of
4 that is to put a chill on any workers who might be leaning
5 toward becoming part of the union membership drive.

6 Now, would you support such an injunction, where it's
7 shown to be clearly illegal?

8 MR. STOKER: Well, Senator --

9 SENATOR PETRIS: Not the injunction, but the
10 activity.

11 MR. STOKER: My concern is, first off, I'm an attorney,
12 but I had no labor background. This is an area that I have not
13 dealt with at all.

14 I'll be real blunt with all Members of the Committee
15 and the Chair, as I would in any decision, I'd be reading the
16 decisions. I'd be sitting, talking with my Board counsel, and
17 making a decision based on what the law is.

18 What I'm concerned about is, the issues that we have
19 come before us, is where the growers have gone in and sought
20 writ of mandates in superior court, of which we have, and myself
21 leading that charge, have vehemently opposed growers using the
22 local courts, based on, under the law, the ALRB has the
23 exclusive jurisdiction.

24 Just off the top of my head here, I'm somewhat
25 concerned in terms of inviting local courts to become involved
26 in regards to dispute resolution, whether it's writs or whether
27 it's injunctions. And saying on one hand, it's appropriate,
28 and, on the other hand, saying it's inappropriate.

1 I have not dealt with those issues. I don't know if
2 it's the kind of disputes that are arising out there are
3 different, but we have not had those kind of disputes come
4 before us.

5 I'm just really concerned, on a very, very technical
6 legal issue, thinking it out here, without reading the cases,
7 getting the advice of counsel.

8 But I have been consistent in fighting for the ALRB's
9 jurisdiction being upheld, knowing that if the superior
10 courts -- such as right now, we have a case that's on appeal, a
11 case involving Gallo, that they involved the local court, and
12 got the court to issue a writ that we're now taking up to the
13 Court of Appeals, saying that's wrong. Because traditionally,
14 the way to deal with resolving, or taking up on appeal ALRB
15 matters, would be to go to the Court of Appeal, would be the
16 appropriate next judicial level based on how the statute's
17 designed.

18 SENATOR PETRIS: I appreciate that. I raise it in the
19 big over-all context of the law relating to the right to
20 organize, and the resistance, which is understandable, by
21 employers. But it shouldn't go to the point where they're
22 violating the law.

23 In a lot of these cases, history has shown that the
24 employer knows he's going to lose in court, but he'd much prefer
25 to pay the fine if he's successful in discouraging workers from
26 becoming part of the union movement. That's whole purpose, is
27 to really put a chill on them.

28 Hopefully, you never will run into that. Maybe that

1 won't happen.

2 MR. STOKER: If I do, I can promise you, I will
3 thoroughly research it and spend a lot of time with my Board
4 counsel in arriving at a conclusion.

5 CHAIRMAN LOCKYER: You don't have authority, the Board,
6 that is, to issue an injunction; right?

7 MR. STOKER: Not that I'm aware, Mr. Chairman.

8 CHAIRMAN LOCKYER: You'd have to go a local court --

9 MR. STOKER: Right.

10 CHAIRMAN LOCKYER: -- to get that.

11 MR. STOKER: Right.

12 CHAIRMAN LOCKYER: And so, I understand your general
13 thought that disputes ought to come before the ALRB. That makes
14 sense, except that would be a circumstance in which you'd have
15 to go and use the traditional --

16 MR. STOKER: Absolutely.

17 CHAIRMAN LOCKYER: -- system to seek your own
18 enforcement.

19 Is there anyone present who wants to raise any
20 questions.

21 Let me ask, I guess the budget is shrinking. In the
22 largest point, there were almost 300 employees?

23 MR. STOKER: Down to about 75 now, Mr. Chair.

24 CHAIRMAN LOCKYER: So, it's down substantially.

25 MR. STOKER: To 70, actually.

26 CHAIRMAN LOCKYER: Still plenty of work to do there?

27 MR. STOKER: There's still plenty of work. In fact, if
28 you look, I think, in 1994, with our five-year averages I took

1 before the Senate Budget Committee and the Assembly Budget
2 Committee, basically we're at about the same amount of workload
3 that we've had over the last five years, with the only exception
4 being in 1994, there was blimp upwards in terms of cases
5 processed.

6 The things that I think do not get enough publicity,
7 that shows the resources, though being used in an efficient way,
8 and in a way of prioritizing, is, notwithstanding reduction of
9 our budget from a peak around \$9 million to almost -- and almost
10 300 employees, to just below \$3 million and 70 employees. We've
11 gone from the amount of time to process an election, from the
12 vote to certification decision, from about 250 days average, to
13 now just over 41 days.

14 I think all the parties would say that -- that's
15 something I didn't mention in my comments. I made it known the
16 first day I came in, there had been an election that had been
17 pending for four or five months. I let it be known, elections
18 are the top priority. We had that out in 13 days.

19 So, we have the same amount of workload that we've
20 really had over the last five years. I think when you look at
21 this added dimension that you can't even track in terms of, we
22 are putting a lot of resources from the Board's side and the
23 General Counsel's side towards helping parties get to a
24 settlement. That takes resources.

25 And I think you'll see a lot of more of that time being
26 spent, that obviously, if we're able to get a settlement, a
27 bilateral settlement, that will ultimately diminish, you could
28 argue, the amount of time we would have traditionally spent

1 dealing with cases going all the way up to Board hearings.

2 And I think finally, I'm one of those that never like
3 to speculate on futures, but I think if you look to the grower
4 community, if you look to organized labor, in particular the
5 United Farm Workers, who has the largest presence of any union
6 that deals with the Agricultural Labor Relations Board, you've
7 probably read many of the articles in the Wall Street Journal,
8 USA Today, the Los Angeles Times, and the amount of elections
9 that the UFW has been successful.

10 Arturo Rodriguez is bringing, I think, a different kind
11 of approach. That is, that he is listening to the other side,
12 to what the other side has to say. I think the other side has
13 moderated their approach. Maybe it's the evolution of the times
14 in this area that you have growers that are more willing to sit
15 down and negotiate than they, perhaps, would have been in the
16 past. You have United Farm Workers and other union groups that
17 are more willing to potentially look at the halfway point
18 between how do we get there.

19 I think the fact that the settlement that I mentioned
20 earlier, Bruce Church and the United Farm Workers, I mean,
21 whether we get there or not, I think just the fact that the
22 parties are so close maybe provides a perspective in terms of
23 how many of the parties have come together in a more moderate
24 way.

25 So, I think you're going to see a lot more activity in
26 the next few months and years to come in regards to the unions
27 working with the growers in California.

28 CHAIRMAN LOCKYER: Would that suggest some at least

1 tentative -- I don't want to lead you too much -- what's your
2 thought as to integrating the two or more boards, PERB and Ag?
3 Any preliminary recommendations?

4 MR. STOKER: Well, I come from a background, I was
5 known as a supervisor that did a great deal of downsizing and
6 consolidating. And I'm one of those that believe if
7 consolidating makes sense, consolidate.

8 Sometimes just by consolidating, though, you can cost
9 more money in doing that. I think that's the important thing to
10 look at.

11 My sense is with PERB, it goes back to listening to all
12 the parties. When all the parties, from organized labor to the
13 growers, are saying, it doesn't make sense to put the
14 agricultural labor matters before a public employee board,
15 whether it's perception or not, the perception is --

16 CHAIRMAN LOCKYER: More urban?

17 MR. STOKER: Absolutely. And I think, back to my
18 perspective, the policy is your call. The way I look at it, if
19 you're going to have Agricultural Labor Relations Act, the
20 policy is a determination, if you're going to have an Act or not
21 have an Act, if you're going to have an Act, somebody is going
22 to have to then administer the Act and enforce the Act, whether
23 it's the Attorney General's Office, whether it's the Department
24 of Industrial Review, whether it's PERB, whether it's the ALRB.

25 And I think as long as somebody is charged with having
26 to implement that Act, what you have is an entity that, in a
27 neutral, objective way, understands agricultural, and the
28 agricultural issues aren't going to get confused with other

1 issues that don't pertain specifically to agriculture as it's
2 enumerated in Agricultural Labor Relations Act.

3 I think what you would find is, ultimately, whoever you
4 would transfer this authority to, and whoever you transfer it
5 to, requests the additional resources to administer and enforce
6 that act, it's going to cost as much or greater, keeping in
7 mind, from nine million to three million, a lot of the costs are
8 not -- most of them aren't in Sacramento. They're in the
9 regional offices that have to go out and investigate, and go
10 through and review the charges, and then dismiss them or pursue
11 them. And pursuing them starts the process. It ultimately can
12 lead to Sacramento before the Board.

13 Being a person known, with my background, for saying
14 always consolidate when you can make money and do it as
15 efficiently, I don't believe anybody out there -- and I'm not
16 trying to toot my own horn, if I believed it, I'd say in a
17 minute, do it, get rid of my job position tomorrow -- I don't
18 think anybody out there can do it as efficiently and effectively
19 as the Agricultural Labor Relations Board is currently.

20 CHAIRMAN LOCKYER: Okay, Senator Ayala.

21 SENATOR AYALA: You have a five-member Board, with two
22 vacancies. That leaves you with three, a bare quorum. You
23 don't have much flexibility, do you.

24 MR. STOKER. Not only that, the Governor and to the
25 Legislature --

26 CHAIRMAN LOCKYER: Do the three seem to agree?

27 MR. STOKER: No, we disagree. And we have -- one of
28 the things I brought is, I think there was a tendency to try to

1 come to consensus as much as possible. I've said, we need to
2 work, but there's nothing wrong with having footnotes, letting
3 parties read different perspectives of Board members.

4 But I guess, if the question was asked to me, are the
5 three of us able to get the work done? Yes, we are. Could
6 there be a time that it would be very, very difficult with three
7 members? Definitely.

8 SENATOR AYALA: You have three members agreeing yes and
9 no all the time?

10 MR. STOKER: We have three members that clearly have
11 different perspectives, and I would say the three cases we're
12 trying to get out as we speak, probably there'll be a two-one
13 ruling, at least on aspects of the Board case.

14 But we've been able to get the board rulings out.
15 Often, as I understand, there were times when there were
16 five-member boards, and all five members didn't participate.
17 They would designate three people to participate.

18 So, I'm one of those, if they want to send me two more
19 Board members, we will, five Board members meet, and we will do
20 our statutory duty.

21 I guess from my county supervisor days, I've learned to
22 limit -- learned to respond with what we have, and you have
23 three Board members currently, that we will continue responding
24 as we have. I have full faith that the three of us are three
25 Board members that understand this area of the law and are
26 committed -- that's the key, committed -- to doing their
27 statutory duty, can do it.

28 CHAIRMAN LOCKYER: Other questions? The Beverly

1 motion.

2 SENATOR BEVERLY: Move we recommend confirmation.

3 CHAIRMAN LOCKYER: All right, let's call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Lewis.

7 SENATOR LEWIS: Aye.

8 SECRETARY WEBB: Lewis Aye. Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

13 CHAIRMAN LOCKYER: Aye.

14 SECRETARY WEBB: Lockyer Aye. Five to zero.

15 MR. STOKER: Thank you, Mr. Chairman, and thank you,
16 Members of the Committee.

17 CHAIRMAN LOCKYER: Senator Ayala, we have the prior two
18 on call, 4-0. I don't know if you would wish to have us list
19 the roll, or if you want to add you on to those two.

20 SENATOR AYALA: Go ahead.

21 SECRETARY WEBB: Ayala aye on both, 5-0 on both.

22 CHAIRMAN LOCKYER: Mr. Stamison, good afternoon.

23 MR. STAMISON: Good afternoon, Senator, Members.

24 CHAIRMAN LOCKYER: Do you know anything new since the
25 last time we spoke, or are you here to respond to some of our
26 new questions, or what do you want to do here?

27 MR. STAMISON: It's been an exciting week. Someone
28 asked me how I was on holding up, and I said, well, I've been

1 tackled by Dick Butkus, I've had back surgery, knee surgery,
2 couple broken bones, a concussion or two. But this ranks right
3 up there, one of life's meaningful experiences.

4 I'm glad to be here before you. We have discussed a
5 major issue that was brought up by you, Mr. Chairman, and some
6 of the other Members, regarding MBE/WBE/DVBE provisions on 3307,
7 and we've addressed those. And the bill will be heard tomorrow,
8 and those provisions will be deleted.

9 CHAIRMAN LOCKYER: I've heard that, and I think that's
10 a sensible course. That issue can always come up in other
11 contexts.

12 MR. STAMISON: That's right. There's just a lot of
13 good stuff in 3307, and we didn't want to jeopardize that. I
14 think we had a consensus that procurement reform's time has
15 come.

16 CHAIRMAN LOCKYER: Could you comment for us today on
17 the Governor's proposal to privatize and out source various
18 functions in state government? And if there are any specific
19 responsibilities that your department would have to undertake
20 that effort?

21 MR. STAMISON: I could.

22 We -- I think the newspapers are quick to jump on the
23 word privatize.

24 What the Governor is looking for is to have a
25 competitive California government. And that could mean a lot of
26 things. Privatization is just one tool in that tool box.

27 He's not an ideologue on privatization, neither am I.
28 It does make sense in some areas, and in other areas it

1 doesn't.

2 In my last private sector job, I traveled the world,
3 putting together public-private partnerships for commercial
4 airport development. Some airports just weren't candidates and
5 others were.

6 I think every case, on a case by case basis, will be
7 considered.

8 CHAIRMAN LOCKYER: Have you seen anything yet which
9 tentatively makes management and fiscal sense within your
10 department?

11 MR. STAMISON: Well, I have a little bit of a bias. I
12 came into the department having started up two small
13 telecommunications companies. And I must say, I came in asking
14 the question, why is the state in the telephone business? And
15 I'm still asking that question.

16 We brought in a very, very appropriate and very well
17 thought of consultant that has done some very good work. We're
18 embarking on some of the things they've said right now, and
19 we're still going to ask that question.

20 And we'll probably test the marketplace, Senator, on
21 Telecom. That comes to my mind.

22 CHAIRMAN LOCKYER: We've kind of wondered the same
23 thing from time to time when we look at the costs associated
24 with some of them, Cal Net and so on.

25 Well, I have what seems to be about an 80-page
26 document. It's a little less than that, eight maybe, from
27 Senator Alquist.

28 Have you had an opportunity to review any of his

1 questions?

2 MR. STAMISON: Senator Alquist, no, no.

3 CHAIRMAN LOCKYER: Well, I'm reluctant to surprise you
4 with it, but they're probably ones you know. I was trying to
5 sort of sift through them.

6 I'll give you that, and maybe, when you have an
7 opportunity, since this will come up on the Floor, if not
8 sooner, you can keep that one. You may want to respond
9 specifically to Senator Alquist about some of the areas of
10 interest that he has.

11 MR. STAMISON: Certainly.

12 CHAIRMAN LOCKYER: A couple that he mentions, one was
13 that I had just asked you.

14 Another is, if there are changes in the state
15 construction and leasing process which you would contemplate,
16 what are those? Would the Legislature's role change in any way?

17 MR. STAMISON: Changes in the process, or is he talking
18 specifically, perhaps, regarding the Sacramento Capital Plan?

19 CHAIRMAN LOCKYER: Part of his comment is about the
20 Sacramento Capital Plan, yes, for the Capital area.

21 MR. STAMISON: In that regard, we hope to submit, from
22 a departmental standpoint, to the Governor next month a plan.
23 We have been asked -- I think the original legislation was 1977,
24 and then the Governor's executive order in 1993 that DGS is
25 required to come up with a plan. With the help of the ULI
26 study, we hope to have a very viable plan on the use of
27 property.

28 CHAIRMAN LOCKYER: When you make changes in the plan

1 like that, is that subject to legislative review? Do you
2 recall?

3 MR. STAMISON: In the plan, I think we have some pretty
4 broad powers, but it's always been prudent for us to discuss
5 with the Legislature the action we're taking.

6 On this plan, on the Capital Plan, for example, we will
7 be doing that.

8 CHAIRMAN LOCKYER: I think that question gets asked
9 about eight different ways here.

10 MR. STAMISON: Duly noted.

11 CHAIRMAN LOCKYER: Your response may be sufficient as a
12 generic matter. Maybe Senator Alquist or others would want to
13 ask more specific points.

14 MR. STAMISON: More than happy to work with the
15 Senator.

16 CHAIRMAN LOCKYER: Are there other questions? Yes,
17 Senator Ayala?

18 SENATOR AYALA: Mr. Stamison, the SEIU has a problem, I
19 understand, with the Board of Equalization building on N Street.
20 Has that been resolved, the problem with the janitorial services
21 subcontractor?

22 MR. STAMISON: Some of that was touched upon last week,
23 Senator. Just before I walked in -- pardon me -- five minutes
24 after I sat down, I understand there's a letter protesting my
25 confirmation from SEIU.

26 I don't have a copy of it, but I think it's regarding
27 the Board of Equalization.

28 I want to say today that DGS, Senator Lockyer asked

1 last week if we had authority to cancel the contract. We do
2 have the authority to cancel the contract without cause on a
3 60-day notice if the vendor is considered disreputable.

4 However, at this point, we've received nothing but
5 allegations. The contract was awarded on a competitive basis
6 under law. We received a lot of information from SEIU, in fact,
7 my Chief Deputy, Steve Olsen, has met with them on more than one
8 occasion.

9 We've also received a lot of information from Somers
10 and Company.

11 The NLRB is gathering information on the case and will
12 be conducting hearings in June. Originally, they were scheduled
13 for May, I think May 17th. They will now be in June, early part
14 of June.

15 The issues are of an extremely complex nature. And
16 quite honestly, we are not competent at this time to make these
17 decisions, because there's not enough sufficient evidence to
18 indicate that Compass is in breach of contract.

19 We will wait for the NLRB's findings. I feel strongly
20 it's the right thing to do at this time. It is due process.

21 SENATOR AYALA: You've had a chance to discuss this
22 issue with the SEIU people.

23 MR. STAMISON: I have not personally, but Chief Deputy
24 Olsen has. He's in the room today, if you would like him to
25 make a comment, I can ask him to come up.

26 SENATOR AYALA: I'd like to hear what the end result
27 was of that conversation you had?

28 MR. STAMISON: Steve, please come up.

1 CHAIRMAN LOCKYER: Are there other people who wish to
2 comment or who are knowledgeable about this issue?
3 Mr. Davenport's here.

4 I think I may have discouraged someone from Somers from
5 coming in. I was called on Friday by one of the gentlemen
6 involved in that business, and I said, incorrectly, Gee, I don't
7 think this issue is coming up again. You don't have to come in
8 and comment. So, I feel a little bad that I gave him that
9 advice.

10 SENATOR AYALA: I'd just like to have the end result of
11 the conversation you had with the representatives of SEIU.

12 MR. OLSEN: Senator Ayala, Steve Olsen. I'm the Chief
13 Deputy at the Department of General Services.

14 I've met on two occasions with representatives of
15 SEIU. One occasion, week before last, the last occasion, I
16 believe, was last Thursday or Friday.

17 We've taken this matter very, very seriously. We've
18 taken a look at the contracts in question, which there are two.
19 There's our contract with Compass, as well as Compass' contract
20 with Somers.

21 We have examined carefully the Legislative Counsel
22 opinion that was requested by Senator Lockyer on this matter.

23 I've had telephone conversations with the owner of
24 Somers as well as other representatives of Somers.

25 I have yet to make contact with Compass. I've been
26 trading calls with Compass to understand exactly where they
27 stand on this particular issue.

28 Clearly, the allegations that have been made by SEIU

1 with respect to Somers' conduct, they're very serious
2 allegations. We take them seriously.

3 We've also heard a lot of allegations on the other side
4 with respect to the activities by SEIU as well as the Department
5 of Labor and the NLRB.

6 To be quite honest with you, it's difficult for us,
7 given our job and our expertise, really to sort all of this out
8 at this point. This is a very complex matter. It's one that
9 we're not normally tasked in terms of rendering judgments or
10 making decisions about.

11 I think our approach, as Director Stamison has
12 indicated, our approach on this issue would be to see first, of
13 all, whether or not the NLRB might make some findings in this
14 area.

15 That does not necessarily mean that we would, in each
16 and every case, wait until that happened. If we had some
17 evidence that came in prior to that time that there was really
18 seriously something afoot, and that this was a situation that
19 represented a material breach of a contract with Compass, we
20 would move to act in that particular case.

21 I think what we are hoping for is that the NLRB will
22 give us some findings that are grounded in a factual
23 determination and in law. We would take look at the nature of
24 those findings, and we would talk to Compass and Somers and see
25 if they could address those issues. And if they couldn't, we
26 certainly would consider that they could be in breach of the
27 contract with the state.

28 As the Director indicated, there really is no legal

1 impediment that is standing in our way. We do have a 60-day
2 cancellation clause without cause, and that certainly could be
3 exercised.

4 From our standpoint, we have a situation that is
5 difficult to sort out, and since these were contracts that were
6 bid by the state on a competitive basis, I think our conclusion
7 is that we have a duty to base actions on the facts rather than
8 something that is based on allegations that are made in the heat
9 of the moment.

10 That's our feeling as to where things are right now.

11 CHAIRMAN LOCKYER: Mr. Olsen, what I don't understand
12 is, why do you think you have some responsibility to review
13 what determinations that have been rendered by the Department of
14 Labor or NLRB.

15 They've already cited this subcontractor. Are you
16 suggesting that you can't rely on their determination.

17 You said there's been charges levied by the other side
18 at DOL and NLRB. So what? What are the charges that have any
19 relevance that they can raise against DOL?

20 MR. OLSEN: Senator Lockyer, my understanding is that
21 there have been some citations made. The story we hear from the
22 other side is that they are, in essence, protesting those
23 particular findings or denying that that is the case. And this
24 is a situation --

25 CHAIRMAN LOCKYER: How did they protest?

26 MR. OLSEN: I do not know, Senator. I do not know
27 enough about this process.

28 CHAIRMAN LOCKYER: When DOL cites them twice now in

1 five years for violating wage, and minimum wage and overtime
2 laws, I mean, isn't that relevant?

3 MR. OLSEN: It certainly is. What I can't tell you --

4 CHAIRMAN LOCKYER: There are other new charges, and law
5 suits, and so on, and the record reflects that. I understand
6 how those are maybe not settled matters, and you wouldn't want
7 to proceed based on just an accusation.

8 MR. OLSEN: Senator Lockyer, the other information we
9 are attempting to sort through right now with respect to this
10 matter, and this is information that came to us just today, via
11 a copy of a letter from Board of Equalization member, Johan
12 Klehs, to Compass.

13 I have yet to verify Compass' side of the story on this
14 particular issue, but Mr. Klehs' letter suggests that Compass
15 has opined if there are findings that are made in the next round
16 of hearings by the NLRB, then they would take an action to
17 terminate their agreement with Somers.

18 That certainly would put the matter at rest.

19 I don't mean to put this at Compass' doorstep. This is
20 not to say that the Department of General Services doesn't have
21 responsibility for reviewing these matters. We certainly do,
22 and as I have told Mr. Davenport on both occasions that I met
23 with him, we are not taking the position that Compass' and
24 Somers' sole duty to the state are simply to keep the buildings
25 clean. They obviously have a responsibility to do that in a
26 manner that is lawful. And we are looking for contractors and
27 subcontractors who will conduct their business in a lawful way.

28 I think that this is a situation of simple professional

1 judgment that we are taking a look at so many conflicting
2 allegations right now that we simply don't have the facts at our
3 disposal to make a considered judgment, and when we do, we will
4 make a considered judgment.

5 CHAIRMAN LOCKYER: Mr. Davenport, did you want to add
6 something here quickly?

7 MR. DAVENPORT: Mr. Chairman and Members, first of all,
8 I agree entirely with Mr. Olsen's description of this. Mr.
9 Stamison is not known to me, but I've known Mr. Olsen
10 professionally for nearly a decade, and I feel like I'm in the
11 hands of a competent professional.

12 I think we do have a basic disagreement, first of all,
13 as to the merit of these allegations and to the degree of
14 finality that is already there. Some of these issues, in fact,
15 have been settled, and then the new allegations are that -- not
16 by us, but by the National Labor Relations Board -- is that the
17 party in question, Somers, has violated the terms of the
18 settlement, which is to cease and desist, for instance,
19 supporting a company union, illegally formed and continuing to
20 conduct dues.

21 I think the real culprit here, if I were to say one, is
22 really Compass. Compass has the authority here to make this
23 decision on its own, and to decide on its own what -- whether
24 it is living up to its contract. I think it's unfortunate that
25 both Mr. Stamison and the subcontractor, frankly, have been
26 drawn into this, when our view is that Compass could have made
27 the right decision, and none of this would be occurring.

28 I think the fundamental reason that we're in opposition

1 today, whereas, we were neutral before, is that we didn't -- I
2 didn't get the feeling that I was going to get anything quicker
3 here than I had gotten for the first year of this ongoing saga
4 by going through channels. I just didn't know whether there was
5 going to be the kind of finality that I thought Mr. Stamison had
6 the discretion to exercise.

7 And I believe that the facts are clearer, obviously,
8 than he does. And I believe that if I were in his position, I
9 could make this decision based on the facts in front of me.

10 CHAIRMAN LOCKYER: In 1999, you might be.

11 MR. DAVENPORT: I understand.

12 MR. OLSEN: As I told Mr. Davenport, Senator Lockyer, I
13 think that, actually, if Mr. Davenport were in our shoes, he
14 wouldn't have the liberty to contract out these services, in all
15 likelihood, so, it would be a moot issue.

16 I appreciate Mr. Davenport's --

17 CHAIRMAN LOCKYER: Do you have any sense of how long it
18 may take to properly investigate and resolve the matter?

19 MR. OLSEN: I think if you focus entirely on the legal
20 process that is potentially available, you could almost get into
21 an endless cycle of debate and appeal. Clearly, that's not a
22 satisfactory result either for SEIU or any of the other parties
23 to this particular dispute.

24 I think that we can tell you in all honestly, it would
25 not be our intent simply to say, well, we're going to wait until
26 the next round of appeals before we reach any conclusions about
27 this.

28 I am aware that SEIU has had some frustrations going

1 through channels, as Mr. Davenport has indicated, but in all
2 honesty, I have known Allen for ten years. He knows me. I've
3 been extremely responsive to the requests that he initiated.
4 I'm more than happy to sit down and meet with him on a regular
5 basis to review the status of this. Clearly, if --

6 CHAIRMAN LOCKYER: Review regular basis, weekly.

7 MR. OLSEN: If Mr. Davenport wants to meet with me
8 every Friday morning, we will break out the donuts and the
9 coffee, and that would be fine.

10 MR. STAMISON: I'll buy the donuts.

11 CHAIRMAN LOCKYER: You two keep talking.

12 I don't know that there's much more we can squeeze out
13 of this topic.

14 Senator, did you have anything more on it?

15 SENATOR AYALA: It's not widespread, as I understand.
16 It's just simply on that one building. I think it could be
17 resolved. I don't see any problem with it now.

18 CHAIRMAN LOCKYER: Other questions.

19 I don't know how to ask this one, but there's a
20 constant debate, and some undercurrent of opinion relative to
21 the amount of space in the Capital vicinity that's state-owned
22 buildings versus privately owned leased facilities.

23 Do you have any general thoughts about the appropriate
24 policy with respect to those matters?

25 MR. STAMISON: Are you interested in the space itself?

26 CHAIRMAN LOCKYER: Yes.

27 MR. STAMISON: I might be able to dig something out, if
28 you bear with me, please.

1 CHAIRMAN LOCKYER: I think you probably are familiar
2 with this debate.

3 MR. STAMISON: It's been around for a while. It's been
4 around for a while.

5 CHAIRMAN LOCKYER: Yes.

6 MR. STAMISON: Just to give some people who might not
7 be up-to-date, that preceded the legislation in '77.

8 In 1976, there were 85 major agencies located in
9 Sacramento at 150 different locations. One agency with 2,000
10 employees was scattered in 22 different locations. Movement
11 between related agencies, and even between departments within an
12 agency, is cumbersome and costly. So, you could see why that
13 led up to, gee, shouldn't we be having more consolidation in our
14 buildings.

15 Today, the departmental fragmentation that led to the
16 '77 now is thus: Environmental Protection Agency now at 21
17 different locations in the city; Consumer Affairs at 11
18 locations; Health Services at 17 locations; Education at 7
19 locations; EDD at 24 locations; DGS, not immune to this
20 fragmentation, 18 different locations; Corrections at 5
21 locations.

22 The current status of state facilities, is what I think
23 you're asking for, there are 111 different agencies now, with
24 59,000 employees, occupying 13-and-a-half million net square
25 feet of office space, at 250 locations. So, 6.4 million square
26 feet, or 48 percent of this space, is state-owned.

27 CHAIRMAN LOCKYER: How much?

28 MR. STAMISON: It's 48 percent, 6.4 million square

1 feet; 7.1 million square feet, or 52 percent, is leased space;
2 7.6 million square feet, or 56 percent of the space is downtown;
3 and 5.9 million square feet, or 44 percent, is in outlying
4 areas.

5 Now, there will be a mix, even with the new plan.
6 There will be a mix. Downtown does not make sense for all the
7 agencies' needs. Some agencies want to do what we call one-stop
8 shopping, and it would be ludicrous to have them located in a
9 highrise or downtown. So, we'll be very flexible on that.

10 CHAIRMAN LOCKYER: How about the appropriateness of 48
11 versus 52? Are there any thoughts about that proportion that's
12 public versus private?

13 MR. STAMISON: We're going to take a very pragmatic
14 business viewpoint on that. Whatever -- whatever services the
15 taxpayers best in terms of maximizing our bucks.

16 CHAIRMAN LOCKYER: Seems to be the right test, I would
17 say.

18 Do you ever get lobbied by building owners that wish to
19 lease some space or builds a new building?

20 MR. STAMISON: Personally? My staff, yes, yes, from
21 time to time. They're nice fellows.

22 CHAIRMAN LOCKYER: Senator Petris.

23 SENATOR PETRIS: Your agency's been working, I think,
24 on Capital Area Plan prior on your time?

25 MR. STAMISON: Yes, Senator.

26 SENATOR PETRIS: I'm wondering where the Governor's
27 Mansion fits into it. We used to have a Governor's Mansion
28 nearby, until Jerry Brown moved out.

1 MR. STAMISON: Yes.

2 SENATOR PETRIS: And rented a mattress to use in his
3 very spartan quarters. He didn't think we should spend a lot of
4 money for housing the Governor.

5 But considering you're going into this long-range plan
6 now, where does the mansion fit into it?

7 MR. STAMISON: Senator, quite honestly, I don't have a
8 clue. I remember years ago reading about it, but it hasn't come
9 up on my scope, but Steve --

10 CHAIRMAN LOCKYER: The right answer is, you could put
11 it under the Subcommittee for Capital Historic Preservation.

12 MR. OLSEN: We were going to suggest some amendments to
13 Senator Petris' bill.

14 CHAIRMAN LOCKYER: You should, when you have an
15 opportunity to do that. I think it would be appropriate.

16 SENATOR PETRIS: I'm glad I asked the question.

17 MR. OLSEN: Senator Petris, I don't think we can tell
18 you the answer right now. It's one of the issues that we're
19 taking a look at in putting our next proposal together.

20 My recollection of the more recent history of this is
21 that, at least last year, there was a proposal that would have
22 utilized a portion of some two and a half million dollars that
23 is set aside right now for that purpose for renovation of the
24 Stanford Home, for purposes of a facility that might serve as a
25 residence or as reception center.

26 There was some debate about whether or not that should
27 be used in that manner, or whether it should be retained instead
28 for its original intended purpose, which was a stand alone

1 residence for the Governor located in the downtown area.

2 SENATOR PETRIS: I've forgotten, do we own that? Does
3 the state own the Stanford Mansion?

4 MR. OLSEN: Yes, it does.

5 And it was not possible last year to reach an agreement
6 on the appropriate use of that fund.

7 I have received some communications from Senator
8 Alquist's office -- as I recall, he has an abiding interest in
9 this issue -- that he is agreeable that that money might be
10 used, rather than for the permanent residence, instead for the
11 renovation of the Stanford Home in the manner that was described
12 last year. So, there may have been some change in opinion
13 within some of the Members of the Legislature.

14 I can't tell you right now what the administration's
15 view on that is, simply because I haven't had the necessary
16 discussions with the Governor's Office.

17 SENATOR PETRIS: I wonder if you ought to look at the
18 prior mansion, too. That was vacated because of fire hazards,
19 and we didn't want the Governor to be jeopardizing himself and
20 his family. So, I don't know if anything was done to renovate
21 it sufficiently to make it up to code and so forth.

22 Are you considering that building as well?

23 MR. OLSEN: That particular building, I don't think, is
24 within the scope of the studies we're currently undertaking.

25 We're examining the Capital area, which is a particular
26 piece of real estate that is 42 blocks south and east of Capital
27 Park. The old Governor's Mansion is outside of that. So,
28 we're taking a look at assets that are within a particularly

1 restrained area.

2 CHAIRMAN LOCKYER: Senator Alquist, as you know, also
3 wants us to have a unicameral Legislature, so the Governor could
4 live in the Assembly or whatever.

5 Senator Boatwright, I think, wanted to get a word in.

6 SENATOR BOATWRIGHT: Mr. President and Members, I'm
7 here -- I've given this a lot of thought -- I'm here because I
8 think that Mr. Stamison, and I only can compare him to past
9 directors, but there's really been a vast improvement, in my
10 opinion, in the directorship, and I can site those.

11 We used to have a lot of sole-source contracting.
12 That's been substantially reduced.

13 We had a lot of taking care of your friends, which you
14 and I fought out with the State Architect before and others. I
15 have not seen that with the current Director.

16 CHAIRMAN LOCKYER: He doesn't have any friends.

17 [Laughter.]

18 CHAIRMAN LOCKYER: Sorry, I didn't mean to interrupt.

19 SENATOR BOATWRIGHT: That might be good. It might be
20 good, if they were taking care of their friends, that he doesn't
21 have friends.

22 CHAIRMAN LOCKYER: I agree. Well, I liked his answer
23 to the -- I don't know if you were here -- we talked about the
24 fact that 48 percent of the space is state-owned, and 52 percent
25 privately owned, and there's some tension that's ongoing. He
26 seems to be able to keep entrepreneurs at arm's length in
27 discussing those matters, and insisting on making the best deal
28 for taxpayers.

1 SENATOR BOATWRIGHT: We had a good example. There was
2 a recent bill that would have undercut, I think, the Urban Land
3 Institute's recommendation that's coming up. We have 42 square
4 blocks of land here. And I think we need to use those to cut
5 down to the cost of land acquisition, which is as high, I'm
6 told, it goes up to about \$80 a foot in the downtown area, a
7 foot. And we've got all this property, and the bill that was
8 moving through, that was opposed by the Director, would have
9 virtually eliminated what we hope will be a reduction in land
10 costs in the future for the building of these buildings.

11 I thought, because I happen to know that the person
12 behind the bill is very close to the Governor, that it took some
13 intestinal fortitude to oppose that bill. The bill was killed,
14 and they actively worked against the bill.

15 So, I'm here to tell you, I think that the Director has
16 been doing a good job for the last year. And unless there's
17 something I don't know about, I would urge that he be confirmed.

18 Thank you very much.

19 CHAIRMAN LOCKYER: You were about to close, I think.

20 If there's anyone present that wishes to add to the
21 list of concerns, please feel free to come forward.

22 Otherwise, I think we're about ready to get to a vote.

23 MR. STAMISON: I just want to add one more piece to the
24 information I was supplying regarding the area in Sacramento.

25 We currently spend \$108 million a year annually for
26 leasing space just in Sacramento. That's a full third what the
27 state pays out to lease facilities throughout the state.

28 So, that's why we look at every one of these conditions

1 on a case by case basis and take a very prudent business-like
2 attitude.

3 CHAIRMAN LOCKYER: Gentlemen, you wanted to add
4 something?

5 MR. RAMOS: Yes, sir.

6 Mr. Chairman, I'm Jim Ramos. I'm the Coordinator of the
7 Disabled Veterans Business Enterprise Networks, Sacramento
8 vicinity. Also, I'm sorry I couldn't be here last Monday.

9 CHAIRMAN LOCKYER: There were others.

10 MR. RAMOS: But anyway, to make this very quick, I'm
11 opposed to Mr. Stamison, not personally, but for some of the
12 very professional reasons that we've cited in our letter to
13 you.

14 Number one, we're very concerned that this bill, this
15 CARA, 3307, does in fact favor large business. We're talking
16 about a pronouncement of 4,000 contracts down to 400, to 200.
17 We're talking about getting into bed with contractors.

18 I'm very concerned about the situation where we went to
19 Mr. Stamison in December and asked him to form a small business
20 and disabled veterans business advisory, to oversee, you know,
21 what was happening in the small business community.

22 I asked him at that time would he consider, you know,
23 establishing a small business goal. That's required in the
24 law. No Director has ever established a small business goal.
25 Everybody knows about the five percent preference in the small
26 business contracting, but nobody remembers Part A, which says
27 the Director should establish a small business goal.

28 We were looking at this program of emphasizing small

1 business as a safety net for the minority and the women
2 community. Certainly, this is color-blind, a small business is
3 color-blind, disabled veterans are color-blind. Nobody was born
4 a small business person. Nobody was born a woman.

5 So in this particular instance, we were looking at a
6 safety net type --

7 CHAIRMAN LOCKYER: I think they're born women.

8 MR. RAMOS: I'm sorry. You're absolutely right.

9 CHAIRMAN LOCKYER: But we were following you.

10 MR. RAMOS: I apologize for that.

11 I probably am one of the few people that actually read
12 every page of 3307, and I've annotated those places where it, in
13 fact, significantly impacts small business and the disabled
14 veteran business community.

15 I have a letter written to me from Senator Jay Vargas
16 of the Department of Veterans Affairs that clearly states that
17 the Governor's intent with regards to affirmative action and
18 with regards to veterans programs, that they would not be
19 impacted by the current review of affirmative action programs.

20 But clearly, they do in fact affect veterans programs.
21 And we're very concerned that we get swept out with the bath
22 water.

23 Veterans -- I could go through a lot of situations, but
24 we have veterans' businesses that are going out of because of
25 the lack of opportunities.

26 CHAIRMAN LOCKYER: What's the status of that bill now?
27 Where is it?

28 MR. RAMOS: It was going to go for hearing tomorrow.

1 CHAIRMAN LOCKYER: In the Assembly?

2 MR. RAMOS: Yes.

3 CHAIRMAN LOCKYER: I don't know what they'll do over
4 there, but my recommendation would be to vigorously involve
5 yourselves and your association in the Senate deliberations on
6 the measure.

7 I'm inclined to think that it's hard to blame the
8 Director for policies that, perhaps, emanate from people higher
9 than himself.

10 MR. RAMOS: Sir, my only comment to that is, when we
11 suggested to him --

12 CHAIRMAN LOCKYER: I know, you mentioned the small
13 business advisory.

14 MR. RAMOS: Right. We felt that with the previous
15 Director, that we did have a two-way communication with him,
16 and that we did solve a lot of issues.

17 Certainly, you know, the small business code, the way
18 that we do procurement today, perhaps, could be improved. But,
19 you know, certainly You would expect that the small business
20 community could be part of that forum to help improve that
21 program.

22 We've had really no opportunity to participate in
23 that. That's where we're very concerned, is that we don't have
24 an opportunity, and we appear to be shielded from Mr. Stamison.

25 We really would like to help him be successful, but we
26 feel very great frustration, because we have, in fact, been
27 shunted aside.

28 CHAIRMAN LOCKYER: Sir, did you want to add anything?

1 MR. BROCK: I'm Bert Brock. I'm a small business,
2 minority DVBE, and again, I'm like Mr. Ramos, who's far more
3 articulate than I am, and Mr. Stamison is far more articulate
4 than I am.

5 CHAIRMAN LOCKYER: Just in the interest of using our
6 time efficiently, I want you to just tell us if your concern is
7 the same or different.

8 MR. BROCK: My objections are generally the same, with
9 the emphasis more on the establishment of a minority council,
10 advisory council.

11 It seems to be loaded with his own deputies, so he's
12 therefore going to get filtered words. As every commander and
13 every leader in business knows, your hardest job is to get word
14 that is not filtered so you actually know what's really going
15 on.

16 In this case, I don't see how he could find it out,
17 unless one gets off -- I'm sorry -- moves ahead and gets
18 started in this committee, and that it actually represents the
19 small businessman. I don't care who's on it, as long as they
20 are small business.

21 That's all I have to say.

22 CHAIRMAN LOCKYER: Thank you.

23 Why don't you conclude, Mr. Stamison, by mentioning any
24 small business advisory. I know we talked about it a little
25 last session. You might give us an update on that and refresh
26 our memories.

27 MR. STAMISON: Indeed, a Small Business Advisory
28 Council has been formed. There's never one that's existed

1 before in the Department of General Services. It's on small
2 businesses, per se.

3 And I have four of my executive staff very much
4 involved on this. This is just not a discussion session. This
5 is a session to find out where the real problems are.

6 I'm very concerned that 5500 or so small businesses
7 have disappeared from the roster since April of 1992, and we're
8 going to fix it. It's very plain to see that business as usual
9 before was not getting the job done.

10 I can assure you, we're going to try something new, and
11 we're going to get the job done. Small businesses are very
12 important to this state and to the people of the state.

13 CHAIRMAN LOCKYER: Okay, thank you, sir.

14 Senator Beverly.

15 SENATOR BEVERLY: Are you ready for a motion. Move we
16 recommend confirmation.

17 CHAIRMAN LOCKYER: Call the roll.

18 SECRETARY WEBB: Senator Ayala.

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye. Senator Lewis.

21 SENATOR LEWIS: Aye.

22 SECRETARY WEBB: Lewis Aye. Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Petris Aye. Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

27 CHAIRMAN LOCKYER: Aye.

28 SECRETARY WEBB: Lockyer Aye. Five to zero.

1 CHAIRMAN LOCKYER: Good luck, sir.

2 MR. STAMISON: Thank you, Senator.

3 [Thereupon. This portion of the
4 Senate Rules Committee hearing was
5 terminated at approximately 4:18 P.M.]

6 --ooOoo--
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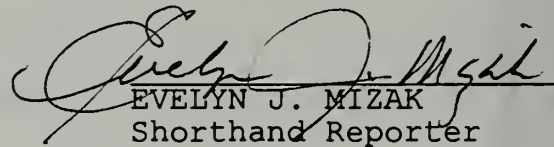
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SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JAMES P. ANTT, JR.
Real Estate Commissioner

LLOYD G. WRIGHT, Member
Acupuncture Committee

COLLEEN S. CASEY, Member
Workers' Compensation Appeals Board

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JAMES P. ANTT, JR.
Real Estate Commissioner

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Governor's appointees, going in order, we have Mr. Antt first.

Good afternoon sir. How are you?

MR. ANTT: Pretty good, sir.

CHAIRMAN LOCKYER: Did you want to begin with any opening description or comment?

MR. ANTT: No, sir.

CHAIRMAN LOCKYER: You're going to make it hard for us, then. We have to quickly start asking some questions.

MR. ANTT: At your pleasure.

CHAIRMAN LOCKYER: I guess you grew up in Bakersfield?

MR. ANTT: Yes, sir.

CHAIRMAN LOCKYER: Is grow up the right word?

MR. ANTT: Well, originally from --

CHAIRMAN LOCKYER: Somebody moved there?

MR. ANTT: I moved there in about the 7th grade.

CHAIRMAN LOCKYER: And you've been very active throughout your professional career in various forms of real estate, financing, and so on.

MR. ANTT: About 30 years now.

CHAIRMAN LOCKYER: What have you found the biggest challenge to be thus far as the Director?

MR. ANTT: Probably the fiscal challenges in a market changing dramatically. Not realizing from the practitioner the demand as a special fund unit, where you have to have a balanced budget, and therefore you rely quickly just strictly on the

1 dollars derived from both the real estate licensees, both new
2 and renewal, as well as subdivisions. Under the current
3 economic conditions for the last six years in the State of
4 California, we've been going down instead of up.

5 CHAIRMAN LOCKYER: So, Finance is talking about
6 eliminating 31 positions?

7 MR. ANTT: Another one, yes, sir. We're down about 102
8 employees from 1990.

9 CHAIRMAN LOCKYER: Does that produce any gaps or
10 thinness in any regulatory function.

11 MR. ANTT: We're trying to steer into those areas so we
12 do not have it. When you wear the hat as a regulator versus
13 some of the other changes that you do, I think the number one
14 challenge is for the protection of the consumer in answering the
15 complaints.

16 While there's a little bit of a slowness in some of it,
17 I don't know it's anymore dramatic than it's been over the last
18 five years. Some of our problems have probably been in the area
19 of the Office of Administrative Law and getting hearing dates
20 more than some of our investigatory problems.

21 CHAIRMAN LOCKYER: So, you don't think these efforts to
22 reduce the budget would have any noticeable impact on a consumer
23 that is purchasing a house?

24 MR. ANTT: No, sir.

25 CHAIRMAN LOCKYER: But the funding is down, the revenue
26 stream. Is there a cause for that that you're aware of?

27 MR. ANTT: It's strictly the licensee base is down from
28 about 380,000 to about 326,000.

1 CHAIRMAN LOCKYER: Over what period of time.

2 MR. ANTT: Since 1990, the high water mark was 380,000
3 licensees in the State of California in 1990. There's as of
4 last week, 326,400. Pretty dramatic. Our revenue has gone from
5 30 million to a little over 21, 21.4. Personnel has gone from
6 412 to 301.

7 We've closed one office, the Santa Ana office, but we
8 were able to still service that area out of Los Angeles and San
9 Diego area. We're monitoring very close the number of people
10 taking tests and/or complaints from that area so we can
11 adequately service those areas.

12 CHAIRMAN LOCKYER: What's the general budget now?

13 MR. ANTT: The budget's around 20. I think approved
14 budget last year was 25.3. I think the other budget, with our
15 latest BCP, I think, is around 23.4.

16 Those are round numbers.

17 CHAIRMAN LOCKYER: So, we still have a realtor for
18 every ten thousand citizens.

19 MR. ANTT: Or real estate licensee.

20 CHAIRMAN LOCKYER: There's some note in our materials
21 that there was a rather extensive revision of the code of
22 regulations during your first year.

23 Could you tell us about that?

24 MR. ANTT: The hearing date is this Thursday, May 9th.
25 And some of the things that we're trying to do seem to be very
26 duplicate, from my standpoint as a practitioner, whereas, in --
27 some restrictions or requirements are to keep certain documents
28 for four years and others for three. We're trying to keep those

1 consistent so they are consistently, every three years.

2 We're going to evaluate, and we haven't made up our
3 mind, we're making some suggestions on the continuing education
4 area. While we're not getting away from the 45 hours of
5 mandated education, we are talking about some of the problems,
6 that you put the burden on the sponsors, those public people who
7 are sponsoring the courses, if you will.

8 There, for instance, as a small example, you have to be
9 in attendance at 90 percent live of the course, and every time
10 you check in and check out, you then have to keep that sign-in
11 and sign-out for seven years. We thought that was somewhat, you
12 know, not needed. So, we're trying to get those down to where,
13 if you have enough faith in the sponsor to sponsor a course and
14 authorize them, you ought to have the certifications, much like
15 the Bar does, if you will.

16 And we're also talking about, in the economic
17 conditions we're in, the minimum course hour is three hours.
18 We're talking about maybe allowing some one-hour courses, to
19 look at that, where some of the licensees may want to take it
20 during lunch hour. They may want to take it in the morning or
21 the evening.

22 And probably -- we're talking with all of the industry
23 before we started this, so, hopefully, we would have the input
24 from the industry as to some of the changes. We have heard from
25 them. They will be at regulation hearing this Thursday.

26 I'm quite sure that we will not have a hundred percent
27 approval. I don't think we ever have nor ever will. There will
28 be some that will be opposed to it, and then we'll have to sit

1 there and listen to their reasons.

2 CHAIRMAN LOCKYER: So, when they talk about oversight
3 on the quality of continuing ed., is that principally how many
4 hours?

5 MR. ANTT: That's my question, because quality is a
6 very subjective thing. Quality in whose eyes? Because it's
7 three hours versus one hour, is that quality? That's -- I've
8 got to find out from them.

9 You know, I'm just telling you that as a practitioner,
10 there has to be some changes in those areas that are meaningful,
11 that are both knowledgeable and accomplish the purpose to
12 protect the consumer from the people who don't have the
13 background or the knowledge.

14 CHAIRMAN LOCKYER: But that's what's meant by that
15 worry, do you think? Is there some other party or regulatory --

16 MR. ANTT: I think some of it is protection of the
17 industry. I fully understand that. Because it may challenge
18 some of the -- I know I was at the community college group last
19 Friday, and they're very concerned. Statutorily, they cannot
20 authorize or allocate correspondence courses. This is -- our
21 times are changing very dramatically, if you will, in the area
22 of education and continuing education. And they're going to
23 have to adapt to some of those changes.

24 I think that's part of the problem that some of the
25 people feel threatened about. The way they've been doing it for
26 ten years may not be the way it's done for the next ten years.

27 CHAIRMAN LOCKYER: How about the matter of maintaining
28 a piece of the license fund in the education account? I guess

1 eight percent.

2 MR. ANTT: Yes, it's still the 8-12.

3 One of the things that has happened is, in this
4 downsizing, if you will, we have -- there's some allocations
5 that the funds are still there, and in effect, if needed, you
6 would take those from your general fund, as I understand it,
7 from the general real estate fund, and transfer those over to
8 the real estate education fund.

9 We have not had the requests for any of the research
10 programs that have been in the years past.

11 CHAIRMAN LOCKYER: Other questions from Members?

12 SENATOR AYALA: Question, Mr. Chair.

13 CHAIRMAN LOCKYER: Senator.

14 SENATOR AYALA: There's been quite a bit of fraud, I
15 understand, in the equity loan area of real estate. It seems to
16 me that strengthening those guidelines would be more helpful.

17 I understand you've been quoted as saying that you
18 would like to end the department practice of issuing guidelines
19 for professional conduct. Can you explain that to us? When
20 there seems to be a greater need for it, you're asking that it
21 be relaxed?

22 MR. ANTT: No, what we're not -- Senator, we are not
23 asking to relax those. What we're trying to do is, there is
24 some duplicate statutory language. Some of the regulations are
25 in two or three different places. So, what we're saying is,
26 they're not needed in some of those other areas, number one.

27 Number two, we agree with you, the need for the
28 protection of some of the consumers, if you will. We have

1 worked with Consumers Union, in spite of some of the press. We
2 have offered to -- we've recently done a video with them for the
3 inner cities, some of the groups. There's about 150 senior
4 citizen groups that we've gone out in mailings and said, we'll
5 appear with, before, or at your meetings to talk about some of
6 the problems that you're facing on the loans on the inner cities
7 that constantly make the big headlines, where somebody went in
8 acting as a repair person and a loan agent, and took advantage
9 of somebody who wasn't very knowledgeable.

10 SENATOR AYALA: You're not concerned, you're not
11 wanting the oversight to be watered down.

12 You're just saying, where the duplication is, just
13 remove the duplication.

14 MR. ANTT: Yes, yes. As we reviewed the legislation,
15 there were about 166 regulations, and about 22 percent we're
16 repealing, and about 22 percent we're changing a little bit, if
17 you will, or suggesting some modification.

18 But one of the things in continuing education, there's
19 16 pages in the regulation. If you read some of those, they are
20 very, very repetitive of other parts of the regulations. That's
21 what we're trying to clean up, so everybody can understand it a
22 little easier.

23 SENATOR AYALA: How many licenses have been suspended
24 or revoked in recent years as a result of the department's
25 actions, and for what causes?

26 MR. ANTT: We received approximately 10,000 consumer
27 complaints. We acted on about 4200 of those in the last year.
28 The other ones are either out of our jurisdiction or they

1 weren't founded.

2 SENATOR AYALA: Primarily for what are the complaints
3 you received?

4 MR. ANTT: They go from failure to disclose a material
5 fact, of hiding a material fact. Three percent of our problems
6 in our consumer complaint area, enforcement, are in the area of
7 mortgage brokerage problems, where either (a), they have --
8 probably, I guess, the correct way would be, they have
9 advertised to seek investors who may want to put money with them
10 on a return, normally higher returns. They have taken that
11 money and failed to pay them back, a Ponzee scheme, if you will,
12 borrowing from the next person to pay it.

13 SENATOR AYALA: Are those problems increasing or
14 decreasing, or remaining pretty stable.

15 MR. ANTT: They're pretty stable right now.

16 SENATOR AYALA: Do you have tools to track down some of
17 these unlicensed agents and brokers that are involved in that
18 kind of work?

19 MR. ANTT: Some of that's very difficult. We try to
20 work hand in hand very close with district attorneys in the
21 local jurisdictions. The problem that they have is, they have
22 the same fiscal problem that the state is having right now, so,
23 plus, the other problem is, they normally don't have the
24 expertise in the area of mortgage financing and/or real estate,
25 so they ask us, or our staff people, to work with them.

26 SENATOR AYALA: Do you have the authority to punish
27 some of those violators?

28 MR. ANTT: There are some limits, yes. We have

1 revocation of license and some fines, not criminal.

2 SENATOR AYALA: Thank you, Mr. Chairman.

3 CHAIRMAN LOCKYER: There seem to be a lot of sort of
4 technical questions that are difficult for lay people, at least
5 me, to follow, mostly regarding the winnowing of regulations.

6 One that's again in our information deals with
7 subdivision developments, which says that the Commissioner can
8 ask for a hazard report if it's an area subject to flood or
9 fire.

10 What have you found? That there's no point in asking
11 for those, or what?

12 MR. ANTT: No. That's asked in another -- that is
13 asked in another section of the law, number one.

14 Number two, it's in our form, that we ask every
15 subdivider. That specific question is part of the standard
16 application of every subdivision in the State of California.
17 Once again, it was duplicative. It's already in another
18 section.

19 CHAIRMAN LOCKYER: Okay. There are some are more
20 comments like that. Perhaps it would be constructive to at
21 least have a reaction on the record.

22 The one that seems to me to be the more serious, this
23 is like having a broker review the salesperson's work and
24 initial. That requirement would be gone and replaced with
25 reasonable oversight requirements.

26 And I guess whatever consumer group commented was
27 concerned that it might be too unclear what the broker's
28 obligations are to review the work of a salesperson.

1 MR. ANTT: My recollection -- I do not have that right
2 in front of me -- but my recollection is that we're not doing
3 away with it. What we're saying is, because of the work style,
4 that I think it says within three days, and I think we're
5 changing that to within five days, is our substantive change.

6 CHAIRMAN LOCKYER: Maybe I should just give you this
7 piece of paper, and you can look at that more easily than me
8 reading it to you, and you guessing about what it includes.

9 Sorry, but this just came in today, so I don't have
10 much advance notice for you. There's three or four listed.
11 Does it ring a bell?

12 MR. ANTT: My understanding is, we're still requiring
13 the certification, the three-year retention of the documentation
14 is pretty standard throughout.

15 That first one would surprise me.

16 CHAIRMAN LOCKYER: You might keep that, if you would.
17 You might refer on your own.

18 MR. ANTT: Sure.

19 CHAIRMAN LOCKYER: Before the final decisions get
20 made.

21 The last one on the sheet indicates that there may be a
22 deletion of the current requirement that brokers be schooled in
23 laws about housing discrimination. That would be, it seems to
24 me, unwise.

25 MR. ANTT: We would no -- this is not -- this is not
26 what we intend, I can tell you that for sure.

27 CHAIRMAN LOCKYER: You might keep that and perhaps drop
28 a note as you have a chance to review the final regulatory

1 changes.

2 Other questions from any Member.

3 Is there anyone present who wishes to comments for or
4 against the appointment.

5 Senator Beverly.

6 SENATOR BEVERLY: Move we recommend confirmation.

7 CHAIRMAN LOCKYER: We have a motion to that effect.

8 Call the roll.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye. Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

18 CHAIRMAN LOCKYER: Aye.

19 SECRETARY WEBB: Lockyer Aye. Five to zero.

20 CHAIRMAN LOCKYER: Good luck, sir --

21 MR. ANTT: Thank you very much.

22 (Thereupon legislative agenda items

23 were acted upon by the Rules Committee.)

24 CHAIRMAN LOCKYER: How about Mr. Wright, Acupuncture.

25 MR. WRIGHT: Good afternoon.

26 CHAIRMAN LOCKYER: Good afternoon. Did you want to
27 start with my comment at all?

28 MR. WRIGHT: I don't think --

1 CHAIRMAN LOCKYER: You're invited to.

2 MR. WRIGHT: I did give a little handout that you all
3 have. I don't really have too much to comment at this time.
4 I'm simply open for questions, if you have any, are regarding my
5 appointment.

6 CHAIRMAN LOCKYER: You might comment, you've been doing
7 this for how long?

8 MR. WRIGHT: I've been on the Acupuncture Committee for
9 three years now.

10 CHAIRMAN LOCKYER: What's been the most difficult issue
11 that they've dealt with during your tenure?

12 MR. WRIGHT: We've had a number of issues that have
13 actually been very important to the Committee. I think the
14 conduction of the examination has always been, you know, fairly
15 high. We have also gone through deep concerned about the
16 enforcement as well.

17 And I believe that, you know, those probably are the
18 two most important issues that the Committee attends to.

19 CHAIRMAN LOCKYER: Are there controversies associated
20 with those?

21 MR. WRIGHT: Those particular areas, the administration
22 of exams? Not really controversies. The administration of
23 examinations for acupuncturists does run into its complexities
24 just because of the nature of the profession and its field.

25 I think the nature of the enforcement issues are
26 probably pretty standard as with any other profession. We run
27 into the same problems that any of the health care professionals
28 do, and just, you know, assuring that, you know, we do a good

1 job in that area and attend to the hard work there is -- you
2 know, requires a considerable amount of focus.

3 CHAIRMAN LOCKYER: Are there are questions from Members
4 at all.

5 Anyone present that would wish to comment either for or
6 against the appointment.

7 All right, probably Senator Beverly's turn.

8 SENATOR BEVERLY: Move we recommend confirmation.

9 CHAIRMAN LOCKYER: Motion to that effect. Call the
10 role.

11 SECRETARY WEBB: Senator Ayala.

12 SENATOR AYALA: Aye.

13 SECRETARY WEBB: Ayala Aye. Senator Lewis.

14 SENATOR LEWIS: Aye.

15 SECRETARY WEBB: Lewis Aye. Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Petris Aye. Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

20 CHAIRMAN LOCKYER: Aye.

21 SECRETARY WEBB: Lockyer Aye. Five to zero.

22 CHAIRMAN LOCKYER: Thank you, sir.

23 MR. WRIGHT: Thank you.

24 CHAIRMAN LOCKYER: Ms. Casey is back.

25 MS. CASEY: Good afternoon.

26 CHAIRMAN LOCKYER: Do you want to tell us about
27 yourself?

28 MS. CASEY: Sure. I'm happy to be here this afternoon.

1 I appreciate the opportunity to tell you a little bit more about
2 myself.

3 For the past 14 years, I've worked in a variety of
4 capacities in the legal profession. In private practice, I
5 assisted small business owners and individuals with their tax
6 and estate planning matters. As a pro bono volunteer for the
7 San Francisco Bar Association, I worked with lower income
8 individuals on all sorts of legal matters. I was a founding
9 director of our homeless advocacy project.

10 And so, I feel I've gained a broad prospective of how
11 the legal system has affected individuals from all walks of
12 life.

13 For the past eight months, I've been a commissioner for
14 the Workers Compensation Appeals Board. And after about three
15 weeks on the Board, I was given a full caseload, which means I
16 reviewed about 40 to 60 files a week since that time. And
17 during that time, I feel I've been able to consider the rights
18 of all the parties, and that I've been able to apply a fairly
19 consistent analytical standard to the fact situations that have
20 been presented.

21 At this point, I'd like to answer any questions that
22 you might have.

23 CHAIRMAN LOCKYER: I'm looking at the law firms that
24 you've worked with.

25 MS. CASEY: Yes.

26 CHAIRMAN LOCKYER: The names are terrific.

27 MS. CASEY: I love them. They're great, yeah.

28 CHAIRMAN LOCKYER: Frolik, tax lawyer; Schrambling and

1 Chu.

2 MS. CASEY: This was actually a consideration before I
3 joined any firm, was making sure that the names were
4 interesting.

5 CHAIRMAN LOCKYER: My favorite Bay Area one is Low,
6 Ball and Lynch.

7 MS. CASEY: Unfortunately, they turned me down. I did
8 apply for a job with them.

9 CHAIRMAN LOCKYER: Insurance defense firm, they think
10 it's cute, and they live up to their name.

11 Anyhow, what's been tough or fun about your job?

12 MS. CASEY: Gee, this has been the totally most cool
13 job I've ever had in my whole entire life. It is just
14 absolutely wonderful.

15 CHAIRMAN LOCKYER: Why?

16 MS. CASEY: We had a wonderful opportunity this year to
17 examine how the reform package, which you guys did such a
18 terrific job with, has been implemented. And we've been able to
19 see how fraud claims have gone down, insurance premiums have
20 been reduced by about 31 percent, stress claims have been
21 reduced by about 50 percent.

22 And in a system that costs about \$11 billion a year,
23 apparently it's been estimated that there's been a savings of
24 about \$1.5 billion. So, that's exciting. That's really fun to
25 watch, and it's fun to be part of the system that's implementing
26 that.

27 CHAIRMAN LOCKYER: Is there anyone present who'd wish
28 to comment either for or against the nomination.

1 Any questions from Members? Senator.

2 SENATOR AYALA: I know there is one vacancy.

3 Any significance to the fact that you have four women
4 and two men?

5 Are you tougher or more liberal?

6 MS. CASEY: I think it's pretty neutral. I don't think
7 the sex really has anything to do with it. I think we're
8 probably more calm.

9 SENATOR AYALA: You're more calm?

10 MS. CASEY: I think the women are, yeah.

11 SENATOR AYALA: Than men?

12 MS. CASEY: Yeah, I think so. I think that's probably
13 true. Although, the two male members of our Board are
14 wonderful, absolutely wonderful. Dick Gannon is --

15 SENATOR AYALA: But not very calm.

16 [Laughter.]

17 MS. CASEY: They're probably more animated. No,
18 they're not meek, but they're probably more animated than we
19 are.

20 It's a great group. We really are fortunate. We are
21 extremely, extremely fortunate with the members that we have on
22 our Board.

23 CHAIRMAN LOCKYER: Well, okay, Senator?

24 SENATOR PETRIS: I'd like to go back to Mr. Frolik.
25 What's his first name?

26 MS. CASEY: Jim Frolik.

27 SENATOR PETRIS: It is Jim.

28 MS. CASEY: Yeah, do you know him?

1 SENATOR PETRIS: We were school mates.

2 MS. CASEY: Did you go to Stanford with him?

3 SENATOR PETRIS: Yes.

4 MS. CASEY: He's a terrific guy.

5 SENATOR PETRIS: I met him at Boys' State in 1938,
6 representing my high school.

7 Say hi for me.

8 MS. CASEY: I will definitely do that. He was a Rhodes
9 Scholar, tennis player, terrific, wonderful person.

10 SENATOR PETRIS: We had a bunch of Rhodes Scholars from
11 my law school class. One of them was Tatum, the golfer, and he
12 was a tennis player. You have to be an athlete in order to
13 qualify, as well as top grades. There were three or four out of
14 my class. Just amazing.

15 CHAIRMAN LOCKYER: Senator Petris has an interest in
16 Rhodes.

17 MS. CASEY: He'll be very honored to hear that you said
18 that about him. It'll be a thrill for him to hear that.

19 CHAIRMAN LOCKYER: Other questions.

20 Is that a motion, Senator Petris?

21 SENATOR PETRIS: Yes, sir.

22 CHAIRMAN LOCKYER: Let's call the roll.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Petris.

28 SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Petris Aye. Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 SECRETARY WEBB: Lockyer Aye. Five to zero.

6 MS. CASEY: Thank you.

7 CHAIRMAN LOCKYER: Well, your enthusiasm for the work
8 is infectious. Good luck, keep it up.

9 MS. CASEY: Thank you very much, thank you.

10 [Thereupon. This portion of the
11 Senate Rules Committee hearing was
12 terminated at approximately 2:55 P.M.]

13 --ooOoo--

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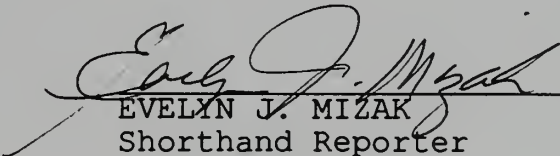
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DIXON ARNETT, Director
Department of Aging

THOMAS P. McCAFFREY, Deputy Secretary
Health and Welfare Agency

PAUL K. RICHARDSON, General Counsel
Agricultural Labor Relations Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Arnett, I guess you're next here.

MR. ARNETT: Mr. Chairman and Members, I am here to ask for your consent to serve as Director of the Department of Aging in accordance with the Governor's appointment effective last September first.

Since that time, I've had the opportunity to work extensively on updating the Older Californians Act. With luck, within a month's time, we will bring to you amendments to two bills, companion bills much like the long-term care pilots of last year. One by Assemblyman Granlund on the Assembly side, and one by Senator Mello on the Senate side.

The idea here is purposefully bipartisan, purposefully bi-house, and it follows the recent completion of some 50 hearings statewide that we have held on amendments to the Older Californians Act. In almost all of the 33 area agencies on the aging since last December, we've held local hearings and meetings. We had five regional hearings around the state, and in fact, my staff is meeting today and tomorrow to amalgamate the tentative advice of the California Commission on Aging, which, in turn, consulted with the Triple A Councils and with the California Senior Legislature, along with the Triple A directors of the 33 area agencies.

It's a pretty comprehensive effort. It will have been, by the time we all get through, the first time that there will have been a comprehensive review of the Older Californians Act

1 since its inception 22 years ago. It coincides with the
2 Congressional consideration of the five-year reauthorization of
3 the Older Americans Act, with which I would sincerely hope the
4 Congress would hurry up and do its job so that we can coordinate
5 with that activity. But even without that, we can do an awful
6 lot of the update that we have in mind.

7 At the same time, and perhaps more importantly, we are
8 intending to ask you to include in the law a mission statement
9 or preamble, or however it's done, under duties and obligations
10 of the Department of Aging, a huge emphasis on home and
11 community based services, which is being done in many counties
12 now, and is really actually being done in as much as 16 states
13 elsewhere across the country. It is finally an idea whose time
14 has come.

15 And what it really simply means, in addition to an easy
16 point of access for the consumer, is a continuum of care,
17 effective case management, without making the consumer have to
18 worry about the seams of state government or federal government,
19 if you will. The expression, seamless government is coming into
20 vogue with the idea that it's this consumer who has a single
21 point of access, and then runs along the continuum of service in
22 a coordinated and integrated fashion, much as you put into the
23 long-term care pilots of last year. What we're doing is very
24 highly coordinated with that.

25 That's my task and my job, first and foremost, at a
26 time when the aging population is growing geometrically. A
27 person turns 50 -- I already did so sometime ago -- every 7.5
28 seconds in the United States of America. By the year 2002, it

1 will be every 4.9 seconds, 24 hours a day, 365.

2 CHAIRMAN LOCKYER: Turns 60?

3 MR. ARNETT: Turns 50.

4 So, you've got the current generation of, let's say,
5 over 60. The other day, I have to tell you a quick story, I
6 walked into Jewish Family Services in Los Angeles for a tour
7 there, and there to greet me was a 100-year-old grandmother who
8 qualified for our services, as well as their care and attention,
9 an 80-year-old daughter, and a 60-year-old granddaughter, all of
10 whom qualified for our programs. So, heck, the Baby Boomer
11 generation, that's nothing compared to what's already
12 happening.

13 So, you've got the senior generation, then you've got
14 the Baby Boomers, then you've got those who sort of bridge those
15 two, called the Eisenhower generation. By that, if you were
16 born when Eisenhower was a general or was president, you're
17 considered part of the Eisenhower generation. When I was told
18 that, I raised my hand and said, "What if you were born when he
19 was a major?"

20 And then you've got the technology generations, plural,
21 that are marching closely behind. It's a fascinating, demanding
22 world.

23 We use over 14,000 volunteers in the state of
24 California today in our various programs, and there lies the
25 salvation to our creativity. As the demand grows, so will the
26 volunteers. Our job is to be creative in using them, and that's
27 why I'm there. And I ask for your confirmation of that.

28 CHAIRMAN LOCKYER: Are there questions from Members?

1 This may be easy.

2 MR. ARNETT: Other than the fact that Senator Beverly
3 says I'm too old for the job.

4 SENATOR BEVERLY: I said that.

5 CHAIRMAN LOCKYER: You don't have to plead otherwise.
6 Presumptively true.

7 SENATOR BEVERLY: I probably committed some violation
8 of law.

9 CHAIRMAN LOCKYER: Senator Ayala.

10 SENATOR AYALA: Mr. Arnett, reading here, there was a
11 number of state programs that provide home and community based
12 long-term care services, such as home health care, personal
13 care, case management, and meals and so forth.

14 Is there any way that we should be getting a little
15 closer together so they're not out in separate programs going in
16 different directions? Integration of these programs for
17 long-term care services?

18 MR. ARNETT: I think, Senator Ayala, if we do our job
19 right, the amendments we bring you in a month's time to the
20 Older Californians Act, which, as I say, is a bipartisan effort,
21 will do that. That'll be the principal contribution, frankly,
22 that will make -- that people who receive the services
23 themselves will care about.

24 Beyond that, as you know, the Governor and others have
25 suggested potential restructurings of the state government, and
26 restructuring of funding streams. And in my experience, this is
27 the third time that a major effort at restructuring for purposes
28 of integration -- integrating health and welfare services has

1 had that kind of top-down influence. It almost invariably
2 requires that. All the efforts of those of us out in the fields
3 to try to suggest ways to restructure things don't necessarily
4 make it beyond the idea stage unless political impetus is
5 there.

6 I see that coming, not necessarily as part of these
7 amendments that I'm describing, although that will lead to it,
8 but there's going to be a huge opportunity for all of us
9 together to consider structurally reflecting exactly what you're
10 saying.

11 SENATOR AYALA: Don't we have the possibility of
12 federal funds, that have not been available to us, in years to
13 come? Shouldn't we be working on that to make sure that there's
14 an overlapping and get the most out of our moneys that we have
15 available for that purpose?

16 MR. ARNETT: I think perhaps whether one speaks in
17 terms of either block grants, which to some is an anathema, or
18 whether one speaks in terms of the kind of flexibility that
19 would allow a local manager to integrate funding of the kind
20 you're talking about, the latter thing, I think, we can do.
21 Give the manager, the local manager, in our case the Triple A
22 director, a lot more flexibility than he or she now has. And
23 that will be part of the amendments that we will bring to you
24 for your consideration.

25 The added part to that is the merging, if you will, of
26 the social and medical models. It's -- the money, the big
27 money, if you will, is on the health side of the model equation.
28 The social side of the equation, which is more my area, is the

1 smaller side.

2 Yet, if we do integrated services in a continuum of
3 care in the manner in which they ought to be done, we would
4 emphasize the social model before the medical model. In other
5 words, try to make a person independent enough that going to a
6 skilled nursing facility is their choice of very last resort, to
7 create the kind of independence in a way of life that makes
8 people have the kind of dignity that they want. They're fearful
9 of the alternative.

10 Consequently, if we can integrate these things, both in
11 the law, and then in the funding streams, and then
12 structurally -- all of which, I think, we have the opportunity
13 to do over the next two years or so in this state, as has been
14 done in a number of other states, so we have examples to go by
15 and we can pick and choose -- I think we will set the stage for
16 the Baby Boomers. We will have gotten ahead of that curve.

17 SENATOR AYALA: Thank you.

18 CHAIRMAN LOCKYER: Senator.

19 SENATOR BEVERLY: I'm prepared to move we recommend
20 confirmation.

21 CHAIRMAN LOCKYER: No additional questions. Anyone
22 present that would wish to comment.

23 Call the roll, please.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Ayala Aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis Aye. Senator Petris.

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer Aye. Five to zero.

7 CHAIRMAN LOCKYER: Good luck.

8 MR. ARNETT: Thank you.

9 CHAIRMAN LOCKYER: Mr. McCaffrey is next, Deputy
10 Secretary of Health and Welfare. Good afternoon.

11 MR. McCAFFREY: Senator, Members of the Committee, as
12 Senator Lockyer mentioned, my name is Tom McCaffrey. In August
13 of 1995, Governor Wilson appointed me to the position as Deputy
14 Secretary of the Health and Welfare Agency. I'm here before you
15 today to ask for your consent in that appointment.

16 Over the past ten years, both my professional,
17 education, and my work experience have focused on public policy
18 in general, and with the last five years, I've devoted most of
19 my time to the health and human services policy issue area.

20 Prior to my current position as Deputy Secretary, I
21 served as an Assistant Secretary at the Health and Welfare
22 Agency from about February of 1994.

23 In addition to my years in state government service
24 here in Sacramento, I have several years of experience on the
25 federal level in the same health and human services issue areas,
26 working on both legislative matters and regulatory matters.
27 That type of experience in the federal level in this issue area
28 is very helpful in my current assignment, being that so many of

1 the programs under the Health and Welfare Agency's jurisdiction
2 are programs that are jointly administered by the federal
3 government and the states. Federal policies and regulations in
4 these jointly operated programs play a significant role in the
5 state's exercise of carrying out the programs and policies in
6 these issue areas.

7 The health and welfare issue area has long been and
8 will continue to be perhaps one of the more challenging and
9 visible policy issue areas facing this state and other states.
10 I believe my last five years' experience in health and welfare
11 issues on both the federal and state level, working with members
12 of this administration as well as federal and state legislative
13 and program staff, in addition to working with members of
14 constituency groups who have a direct stake in our programs,
15 will prove very useful in fulfilling the duties of my current
16 assignment as Deputy Secretary.

17 I appreciate the time given to present this brief
18 statement, and I'm, of course, prepared to answer any questions
19 the Committee may have of me.

20 CHAIRMAN LOCKYER: Are there are questions from
21 Committee Members.

22 There are a lot of sort of general things that deal
23 with block grants, and cost of living increases, so on and so
24 forth. Since I would expect a loyal employee to just repeat
25 what the Governor says, there's no point in asking those. I've
26 heard them already.

27 Other than that, in this current position, what have
28 you found was the most difficult issue to work with?

1 MR. McCAFFREY: I think in terms of a particular issue,
2 or maybe I'd characterize it categories of issues, and that is,
3 in my position, we have a lot of -- a lot of our activity's
4 coordinating issues among departments and working with kind of
5 the lead policy contact on agency-wide issues for Finance, for
6 the legislative staff, or the Governor's Office.

7 I think the most challenging and difficult aspect of my
8 assignment is, oftentimes when issues come up to my level, we
9 have a limited amount of time to make decisions, and a person in
10 my position has not been involved from the ground up on all of
11 these issues, and you have a certain amount of information to
12 use to make decisions; that oftentimes, I'm a person who likes
13 to get involved in details, and gets kind of involved in some of
14 the ground-up policy making. So, it's a frustration in dealing
15 with that kind of a decision making process.

16 CHAIRMAN LOCKYER: So, turf wars?

17 MR. McCAFFREY: Not so much turf wars as it is trying
18 to do your best in making decisions with acknowledgment you've
19 got limited information and time constraints to make that
20 decision.

21 CHAIRMAN LOCKYER: Are there questions from Members?
22 Senator Beverly.

23 SENATOR BEVERLY: Move we recommend confirmation.

24 CHAIRMAN LOCKYER: All right, let's call the roll.
25 Anyone present that wishes to comment.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Lewis.

1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Petris Aye. Senator Beverly.

5 SENATOR BEVERLY: Aye.

6 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

7 CHAIRMAN LOCKYER: Aye.

8 SECRETARY WEBB: Lockyer Aye. Five to zero.

9 CHAIRMAN LOCKYER: Good luck.

10 MR. McCAFFREY: Thank you.

11 CHAIRMAN LOCKYER: Mr. Richardson, Ag. Labor. Good
12 afternoon.

13 MR. RICHARDSON: Good afternoon.

14 CHAIRMAN LOCKYER: Do you want to start with some
15 comment?

16 MR. RICHARDSON: Yes, please.

17 Mr. Chairman, Members of the Senate Rules Committee, I
18 appreciate the opportunity to be here today to answer any
19 questions you may have.

20 My own background and experience is that as a criminal
21 prosecutor, a job I truly loved. Many of the same attributes
22 required of a good district attorney are those necessary in
23 order to be a good general counsel, in my opinion. That is, the
24 individual must have an appropriate measure and balance of
25 intellect, judgement, common sense, and an instinct for
26 fairness.

27 I would add to that a willingness and ability to
28 enforce the law, and openness and accessibility to the parties,

1 and an ability to act decisively.

2 Mr. Chairman, I wish to thank Governor Wilson publicly
3 for giving me this opportunity to serve in this important
4 capacity.

5 CHAIRMAN LOCKYER: Two yes, three noes. Keep working
6 on it. Next line.

7 [Laughter.]

8 MR. RICHARDSON: Thank you.

9 I would like to thank as well those in the California
10 agricultural community, both those who are growers and those who
11 are farm workers, for their -- and their representatives, for
12 their frankness and willingness to discuss with me in recent
13 months their perspectives, their concerns, and their hopes for
14 the future.

15 Finally, Mr. Chairman, I wish to thank the men and
16 women at the Agricultural Labor Relations Board, both those here
17 in our Central Office in Sacramento, and our regional offices in
18 El Centro, Visalia, and Salinas, for their patience and
19 assistance they've shown me since my appointment last July.

20 I wish to thank them as well for their guidance and
21 counsel, as I have come to learn the full dimensions of this new
22 and important job it's my good fortune to serve.

23 I hope to bring to that agency and to serve in such a
24 way as to bring credit to them, to the agency and its mission,
25 and I wish to pledge to the grower community and the farm worker
26 community my pledge to be fair, even-handed and open in my
27 dealings with them.

28 Thank you.

1 CHAIRMAN LOCKYER: Thank you, sir.

2 Is there anyone present that wishes to comment either
3 for or against the appointment.

4 How has the work been? Have you been enjoying it?

5 MR. RICHARDSON: I have. It's a distance from Fourth
6 Amendment search and seizure to labor and ag. issues, but it's
7 been a stimulating challenge, and it has not been a job since
8 July that has not been without some excitement from time to
9 time. I'm enjoying it.

10 CHAIRMAN LOCKYER: What's been hard?

11 MR. RICHARDSON: I think the thing that's hard,
12 particularly if you're coming from the venue of criminal
13 prosecution, is the level of resources that we've got in order
14 to investigate and -- to really investigate and to move cases
15 along.

16 We are an agency now with about 49 employees, and there
17 tends to be lurching effect from compliance work to unfair labor
18 practice investigation and prosecution. It's essentially
19 putting out fires as they come up, rather than a systematic
20 handling of matters that come before us.

21 CHAIRMAN LOCKYER: So, just the relative thinness of
22 investigatorial staff in the field as compared to the D.A. type
23 job?

24 MR. RICHARDSON: Right. To give you some sense of it,
25 Mr. Chairman, we are now at a point where, if there is an unfair
26 labor practice charge that is filed, for instance, by a farm
27 worker group, we send out letters to them, asking them for help
28 in preparing declarations and bringing the matter to us.

1 Generally, if you're a D.A. or prosecutor, you prefer
2 having your own people go out, because you can, maybe over time,
3 have a better assessment of whether that witness has been
4 coached unnecessarily. And you would prefer, in terms of being
5 objective about what's happening, to have your own people
6 conducting the interview, rather than having either the charging
7 party or the charged party giving you declarations they've
8 assisted in preparing.

9 CHAIRMAN LOCKYER: I guess, looking at our materials,
10 there seems to be some backlog of cases where there's uncounted
11 ballots and things of that sort.

12 Could you maybe paint a fuller picture there? Is that
13 something you would get involved in?

14 MR. RICHARDSON: That really is any matter regarding
15 election, the conduct of elections and overseeing, supervising
16 the elections, something that is initially the Board's side
17 responsibility, although the General Counsel's staff in the
18 various regions, as well as the General Counsels involved in
19 that.

20 I'm not as familiar with that particular issue. I can
21 say that in terms of case statistics and backlog of cases, that
22 there has been a need for us to try to address the backlog,
23 because, to a certain extent, it hangs like an albatross about
24 everything that you're attempting to do now in terms of trying
25 to address current issues.

26 CHAIRMAN LOCKYER: How much of a backlog do you have?

27 MR. RICHARDSON: It's not that much right now,
28 frankly. We have -- between the time when I was appointed and

1 April 1st, we went back and reviewed a lot of the material in an
2 expedited way to try to clear as much of the cases that had just
3 been sitting around, where either the witness has not appeared
4 or cannot be located, or some other issue has not been
5 resolved. Then or now, as with the changeover in General
6 Counsel, was a good time for me to address those issues and try
7 to take some of that burden off of the regional offices.

8 SENATOR AYALA: Mr. Richardson, the ALRB was founded in
9 1975. Do you think the intent of the Legislature has been
10 followed to a good degree, that is, to have peace in the fields
11 and protection of workers? That's the preamble, as I
12 understand. Has that been successful in your opinion?

13 MR. RICHARDSON: I think it has, and I tell you this
14 as, again, as somebody who has not been familiar with this
15 venue. But the second or third week I was on the job, there
16 were a group of strawberry workers who went out on strike down
17 in Salinas. I went down there for what was an expedited
18 election. That is, an election which took place in a 48-hour
19 period.

20 Our regional office did a very good job preparing that
21 election, investigating it, conducting it. And as a result, at
22 least in this instance, we had a group of workers that were very
23 anxious and concerned about a condition. We had a grower that
24 was agitated as well. And yet, in that circumstance, we were
25 able to conduct a representational election. The workers were
26 able to go back to work within a span of four or five days. The
27 advantage to both the grower as well as the farm worker was
28 clear, because they were at peak harvest. The farmer could have

1 lost his crop. The farm worker could have lost his wage and the
2 ability to support his or her family.

3 So, in this instance, it brought to me the value of
4 this particular agency in trying to get people beyond the
5 conflicts that have traditionally plagued this particular
6 struggle between growers and farm workers in this state, and it
7 has its advantages.

8 There are certain -- from time to time, there are
9 disadvantages. It is costly. But on the whole, I think it has
10 allowed the parties to maybe reach a point in 1996 that they've
11 never been in, at least in my memory, where I think we are at a
12 crossroads of new opportunities for both the grower community as
13 well as the farm worker community.

14 SENATOR AYALA: Much of the funding was removed by
15 Governor Deukmejian for this Board. Has it ever been restored?

16 MR. RICHARDSON: Well, I can tell you, we have gone
17 from what was an agency that had an excess of 300 employees back
18 in the '70s during the Brown administration. I think now we are
19 down to about 49 employees. We are doing -- and you asked the
20 question earlier, Senator, about what is the hard part, and part
21 of it is just balancing, knowing what we believe to be the
22 intent of the Act, and trying to maintain that, yet, with
23 reduced resources makes it difficult.

24 But I think we are not seeing as many cases filed. Of
25 recent memory, I think there is an alteration in the way in
26 which some of the farm worker labor organizations are relating
27 to various growers throughout the state, and that is causing, as
28 I indicated earlier, new opportunities, I think, for both sides

1 to, perhaps, usher in a new era of cooperation. It remains to
2 be seen whether that'll be the case, but there is certainly some
3 indications that that may be the case.

4 I think we're doing a pretty good job. Again, the case
5 numbers are down, as is our number of personnel to address it.

6 SENATOR AYALA: You went from over 300 employees to
7 just over 40?

8 MR. RICHARDSON: About 49.

9 SENATOR AYALA: The funding has not been restored or
10 even partially restored?

11 MR. RICHARDSON: It has not in the sense that in the
12 General Counsel side of the aisle, I think we have about a \$2.4
13 million budget. In the old days, we had regional offices all
14 over the state. Of course, those were in the early days of the
15 agency, and things were being filed right and left, and
16 complaints were being issued right and left.

17 Now there is, perhaps, a more deliberate process.

18 We are also, Senator, and perhaps this is a more direct
19 answer to your good question, and that is, our work is cyclical,
20 in the sense that if there is more organizing going on in the
21 fields, we see more work in terms of unfair labor practice
22 charges that we must process. Those number of charges have been
23 down in about the last five to six year period.

24 But to the extent there is a turn upward, if there is
25 more active organizing, we will see an increase in the number of
26 charges filed, and we may be hard-pressed to deal with them.

27 SENATOR AYALA: How many election cases are currently
28 pending before the Board in which the ballots have been delayed,

1 the counting, that is? If so, why are they delayed? What's the
2 the problem?

3 MR. RICHARDSON: You know, my understanding is, there
4 are only three election cases pending before the Board right
5 now.

6 SENATOR AYALA: Where the ballots have been delayed?

7 MR. RICHARDSON: No, I'm not aware of any election
8 cases since I've been there, and I can't answer for cases that
9 may have gone back some period of time, Senator.

10 SENATOR AYALA: What causes these delays? I can't
11 understand. Can't the people up there count?

12 MR. RICHARDSON: Well, if they're challenged ballots
13 that may have -- I don't know. I can't answer your question.

14 In every election I've seen since I've been there, the
15 challenged ballots have not been ones that would have altered
16 the electoral outcome. There are certain challenges that are
17 filed soon after the election, but I can't speak with any
18 certainty. I'd be glad to get back to you.

19 SENATOR AYALA: The Board is looking at these issues to
20 see that they're streamlining the process so the delays don't
21 occur?

22 MR. RICHARDSON: I think what you have on the Board
23 right now is a Board that has taken the turn-around time on
24 elections, it's my understanding, from what was an average of
25 about 240 days, to electoral turn-around and review of 40, 41
26 days. It is a priority with this particular Board that they
27 move those elections quickly.

28 There's good reason for it, so that the parties can get

1 on with collective bargaining if the labor organization were
2 certified, but I think they've done a very good job prioritizing
3 election cases.

4 I don't think right now, Senator, there is any kind of
5 backlog to speak of that is posing a problem or impediment.

6 SENATOR AYALA: The General Counsel has the authority
7 to dismiss some of these cases.

8 MR. RICHARDSON: Yes, that's correct.

9 SENATOR AYALA: Does the Board ever review some of the
10 dismissals to make sure that they follow the law that's supposed
11 to be followed?

12 MR. RICHARDSON: The General Counsel, for better or
13 worse, has discretion, like a prosecutor, to decide, once a ULP,
14 or unfair labor practice is charged, whether or not a complaint
15 will issue. And that decision is nonreviewable by the Board.

16 SENATOR AYALA: The Board has no authority to overrule
17 the Counsel?

18 MR. RICHARDSON: They do not in the area of decisions
19 regarding unfair labor practices.

20 They direct my activity in numbers of other areas, but
21 due to the division, separation of powers, we try to maintain
22 between the quasi-judicial side of the Board and the prosecution
23 side, which is the General Counsel's side, there is probably a
24 good reason for that from the standpoint of checks and balances.

25 SENATOR AYALA: The Counsel can settle some of these
26 cases on his own.

27 MR. RICHARDSON: That's correct.

28 SENATOR AYALA: You have no authority to look at those

1 cases, see if you might disagree with the Counsel?

2 MR. RICHARDSON: In regards to Counsel in the regional
3 offices, you mean?

4 SENATOR AYALA: No, your General Counsel. He can
5 dismiss or settle some of these cases.

6 MR. RICHARDSON: Right, that's correct.

7 SENATOR AYALA: The Board has no authority to review
8 his actions at all?

9 MR. RICHARDSON: Well, it kind of depends on -- all
10 settlement proposals go to the Board where there has been a
11 sign-off by the regional office and the General Counsel.

12 But the General Counsel's role in settlement
13 discussions has been delegated from the Board, particularly in
14 cases where the case has already gone through, there's been a
15 Board order, and now the General Counsel is helping to enforce.

16 SENATOR AYALA: The General Counsel is really the
17 strong person on that Board, and you Board members, what do you
18 do?

19 MR. RICHARDSON: Well, I wouldn't want to get in a
20 tangle with my Board over that. I think they're strong in a
21 sense that they have the final decision regarding the legality.
22 On some of it, there are separation of powers issues that
23 essentially, Senator, were modeled after the National Labor
24 Relations Act, and that separation has worked well.

25 SENATOR AYALA: I'm not blaming the Board, because
26 probably that's the way the statute reads. I'm not at all, but
27 I'm concerned that you folks don't have much to say, really, if
28 the Counsel doesn't want you to, the General Counsel.

1 MR. RICHARDSON: Well, I think that we try to work
2 cooperatively and respecting each other's responsibilities.
3 Just as they have authority on cases we take to them to
4 overrule, as they do, positions taken by the General Counsel in
5 advocating on behalf of whoever the charging party is, so, too,
6 the General Counsel has the kind of discretion to say, "Look,
7 there is simply not enough evidence to go forward."

8 SENATOR AYALA: The General Counsel is appointed as you
9 are by the Governor?

10 MR. RICHARDSON: Yes.

11 CHAIRMAN LOCKYER: Have you had an opportunity to
12 develop a philosophy regarding make whole remedies, when they're
13 appropriate or not?

14 MR. RICHARDSON: Not really, Senator. That is one area
15 that I'm trying to learn in the sense, the problem we've had
16 with make whole is having a statistical base, or a sufficient
17 number of contracts to compare a given situation to, so we can
18 make a determination with regard to the make whole remedy.

19 CHAIRMAN LOCKYER: You haven't had to do one yet?

20 MR. RICHARDSON: I haven't personally had to do one.
21 At this point, you rely on staff members whose judgement you've
22 come to rely on and trust.

23 CHAIRMAN LOCKYER: There seem to be disputes about
24 whether they're applicable to unions as well as employers. The
25 statute seems to say just employers. A matter, I guess, of some
26 dispute, whether good faith bargaining or refusal to bargain
27 are circumstances in which they're appropriate, and things of
28 that sort.

1 MR. RICHARDSON: That is when the make whole remedy
2 would be available, when there has been an allegation of bad
3 faith bargaining.

4 CHAIRMAN LOCKYER: But if there's refusal to bargain,
5 does that count also as bad faith?

6 MR. RICHARDSON: I would probably need to defer to
7 somebody on that. I don't know the answer to that.

8 CHAIRMAN LOCKYER: Other questions, comments from
9 anyone? Senator Beverly.

10 SENATOR BEVERLY: Move confirmation.

11 CHAIRMAN LOCKYER: Call the roll.

12 SECRETARY WEBB: Senator Ayala.

13 SENATOR AYALA: Aye.

14 SECRETARY WEBB: Ayala Aye. Senator Lewis.

15 SENATOR LEWIS: Aye.

16 SECRETARY WEBB: Lewis Aye. Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Petris Aye. Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

21 CHAIRMAN LOCKYER: Aye.

22 SECRETARY WEBB: Lockyer Aye. Five to zero.

23 MR. RICHARDSON: Thank you.

24 CHAIRMAN LOCKYER: Good luck, sir.

25 [Thereupon. This portion of the
26 Senate Rules Committee hearing was
27 terminated at approximately 3:07 P.M.]

28 --ooOoo--

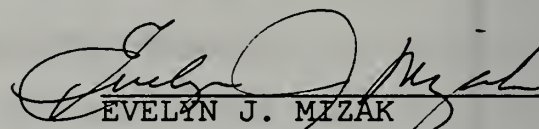
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, 1996.


EVELYN J. MIZAK
Shorthand Reporter

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17 2:02 P.M.

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25 Reported by

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT P. MARTINEZ, Member
California Unemployment Insurance Appeals Board

SENATOR PATRICK JOHNSTON

ROBERT P. PRESLEY, Chair
Youthful Offender Parole Board

ROBERTO P. VELLANOWETH, Member
Youthful Offender Parole Board

DOUGLAS W. WILHOIT, JR., Member
Youthful Offender Parole Board

LLOYD J. WOOD, Member
Youthful Offender Parole Board

MARIO OBLEDO, President
California Coalition of Hispanic Organizations

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--ooOoo--

SENATOR BEVERLY: First is Robert P. Martinez. Come forward, please.

Would you like to make an opening statement?

MR. MARTINEZ: A very brief one, Mr. Chairman.

First of all, thank you very much for this opportunity for my consideration to this appointment on the Unemployment Insurance Appeals Board.

I believe that my experience, both in the public and private sector, has afforded me an opportunity to work with a diverse set of organizations, as well as a diverse set of clients, and employers as well as employees. I've worked at the community level with community services programs, at the federal, state, and local level with senior programs. I've administered a number of programs that involve local government as well as the state level.

I very much appreciate the role of the Board as a body that adjudicates claims involving an individual's unemployment status or disability status, but I also very much appreciate the Board's role as policy maker dealing with the Unemployment Insurance Appeals Board as an agency.

I've had the opportunity to visit each of our field offices. More importantly, I've had an opportunity to better understand just what it is that our administrative law judges and our support staff do, day in and day out, in each of their respective areas.

We're involved with a number of projects that deal very

1 much with the idea of trying to do more, or trying to do better
2 with less. We're very much involved with a project that will
3 update our data retrieval and data capacity systems. And I
4 believe that my experience in dealing with organizational
5 structures and organizational management is a direct benefit in
6 our efforts.

7 I'm ready, willing, and able to answer any of your
8 specific questions, and again, I pressure this opportunity.

9 SENATOR BEVERLY: Does any Member of the Committee wish
10 to ask a question? Senator Ayala.

11 SENATOR AYALA: Mr. Martinez, do you think that the
12 current law as written is fair to all parties concerned? If
13 you'd make changes, what would they be?

14 MR. MARTINEZ: I do believe that it is a fair system,
15 because our system, unlike other benefit-type of systems, or
16 claims systems like the workers' comp. system, basically
17 believes in the tenet that unemployment insurance is a benefit.
18 And, but for certain specific kinds of categories, it should be
19 treated as a benefit. And only in those specific instances
20 where there is a question about whether or not someone is
21 eligible for that benefit do we then have a situation where we,
22 in fact, have to adjudicate.

23 But for the most part, it is in fact a benefit. It's a
24 benefit that is actuarially sound, that I think very much takes
25 into account the capacity of an employer to, in fact, provide
26 resources for this employment insurance benefit. But it also
27 recognizes that an employee has a right to expect unemployment
28 benefits. It's only when there's a question about the status

1 of an individual being an employee that we really get into
2 issues.

3 So, I do believe it's a good system.

4 SENATOR AYALA: You voted to deny certain cases where
5 the law requires it.

6 MR. MARTINEZ: That's right.

7 SENATOR AYALA: Do you feel comfortable about doing
8 that, denying some of those claims.

9 MR. MARTINEZ: Well, at times I do have questions about
10 the specific circumstances involved in a specific case.

11 But a couple of things have helped me to overcome that
12 concern. And I think it's a healthy thing to have that concern,
13 because you're dealing with individual's rights, and the
14 potential of an individual's benefit, or negating someone's
15 benefit.

16 First of all, I am one of seven Board members, and I am
17 very, very honored to be among company such as Senator Roberti
18 and other members that give me an opportunity to learn from
19 their experience, and also to better understand what concerns
20 them as they deal with a particularly onerous situation.

21 But more importantly, we have a very, very professional
22 staff, and I believe that our administrative law judges can be
23 matched against any administrative law judge. Their capacity,
24 their professionalism, is often called to help Board members,
25 and I feel very privileged to have that kind of support.

26 SENATOR AYALA: The current maximum weekly benefit for
27 state disability is \$236. There's legislation proposed to raise
28 that.

1 Would you support that type of legislation?

2 MR. MARTINEZ: Well, I've not had an opportunity to
3 really to look at that.

4 SENATOR AYALA: Do you think it's necessary?

5 MR. MARTINEZ: I think periodically, this is the kind
6 of thing that does need to be looked at.

7 What we have to weigh is the capacity of the system to
8 incorporate an increase, as well as what is necessary for an
9 individual to survive and to continue to look for employment.

10 Disability is a little different in that we're dealing
11 with a different pot, a different resource, and that does
12 involve a lot of federal intervention as well.

13 SENATOR AYALA: These moneys come from the employer.
14 The employee does not contribute; do they?

15 MR. MARTINEZ: Right, it's strictly out of the
16 employer's account.

17 SENATOR AYALA: Employers strictly are the ones.

18 MR. MARTINEZ: Right.

19 SENATOR AYALA: Thank you, sir.

20 SENATOR BEVERLY: Any further questions.

21 Is anyone here in support of the nomination? Anybody
22 in opposition?

23 SENATOR LEWIS: Move confirmation.

24 SENATOR BEVERLY: We've apparently received no written
25 opposition.

26 Senator Lewis moves confirmation. Call the roll.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.

1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer. Four
8 to zero.

9 SENATOR BEVERLY: Ayes four to zero. We'll leave the
10 roll open.

11 Congratulations, sir.

12 MR. MARTINEZ: Thank you very much, Mr. Chairman and
13 Members.

14 SENATOR BEVERLY: The next four Governor's appointees
15 are all membership on the Youthful Offender Parole Board. I
16 would ask that all four of the nominees come forward. We'll
17 hear them together.

18 Two of you look very familiar.

19 Senator Johnston, I understand you wish to introduce
20 one of the nominees.

21 SENATOR JOHNSTON: Yes. First I'd like to ask Senator
22 Presley to Chair the Appropriations Committee. They're not
23 doing what I want, Bob, and to introduce --

24 [Laughter.]

25 SENATOR LEWIS: Not as far as I was
26 concerned.

27 SENATOR JOHNSTON: -- and to introduce Mr. Wilhoit, who
28 is a constituent, a friend of mine, a former county supervisor,

1 long career in law enforcement, and an able, dedicated public
2 servant both at local government and now for the state.

3 I would hope that he would merit your consideration and
4 support for confirmation.

5 SENATOR BEVERLY: Thank you very much.

6 SENATOR AYALA: Can we have a division of the question
7 and have Senator Presley by himself?

8 [Laughter.]

9 SENATOR BEVERLY: Let me call upon the nominees,
10 beginning our list. Would any of you like to make an opening
11 statement? Senator Presley.

12 SENATOR PRESLEY: I'm amazed at how your sins catch up
13 with you so fast here.

14 SENATOR BEVERLY: I'm still getting your mail, by the
15 way.

16 SENATOR PRESLEY: As long as you don't get my rain
17 coat.

18 I don't know if any of us have an opening statement,
19 Mr. Chairman. I think we are prepared to answer any questions
20 and give you a feel for the Youthful Offender Parole Board and
21 what it does.

22 I have a brief outline of it here, if anyone wants to
23 go into it in that depth.

24 We have three very well-qualified members here
25 which I've delegated to answer all the questions.

26 [Laughter.]

27 SENATOR BEVERLY: Let's have you identify yourselves.

28 MR. WILHOIT: My name is Douglas Woodrow Wilhoit,

1 Junior.

2 MR. VELLANOWETH: My name's Roberto P. Vellanoweth.

3 MR. WOOD: Lloyd Wood.

4 SENATOR BEVERLY: Does any Senator have a question for
5 any of the members?

6 SENATOR AYALA: I have a question, Mr. Chairman.

7 If an offender comes before the board initially for the
8 first hearing, what it is that you look for in order to
9 determine how this offender's going to be treated?

10 MR. WILHOIT: As Senator Presley said, he's delegated
11 that. Since I'm the first one, I'll take a stab.

12 It's called an initial hearing. And every ward that
13 comes into the system after it goes through the juvenile or
14 superior court comes to the Youth Authority, either the Northern
15 Clinic or the Southern Clinic. The Northern Clinic is in
16 Sacramento. The Southern Clinic is down in Southern California
17 in Whittier.

18 And they are there approximately at least 45 days,
19 going through all kinds of medical, physical tests,
20 psychological tests to find out where they are education-wise,
21 what level. And we get them as low as first or second grade
22 reading level, math.

23 The entire report is put together, and then it comes
24 before -- an individual board member does the initial hearing.
25 And what we have, in a rather short period of time, we're
26 looking at that. Right now, we handle 18 cases a day. I think
27 all of us agree with 18 cases, to do justice to young these
28 young people, whether they be young men or young women, is not

1 enough time. We don't have enough time, because we should take
2 at least half an hour. But at 18 cases, you only get maybe
3 15-20 minutes to go through all the documentation, to find out
4 -- look to read about their crime, their personal background,
5 their psychological background, educational background, and the
6 recommendations of staff for their needs.

7 SENATOR AYALA: When is this done? Is it done as soon
8 as the court --

9 MR. WILHOIT: It's approximately 45 days after they're
10 sent.

11 SENATOR AYALA: To the Youth Authority facility itself?

12 MR. WILHOIT: Yes, sir. We go right -- either the
13 Northern Reception Center here in Sacramento, or the one in
14 Southern California. Mr. Wood is the Southern California
15 representative. He does a lot of it there, but it's all the
16 same. It's within 45 days we must have that particular initial
17 hearing. Again, it's due process.

18 And then we make a determination, looking at the --
19 interview the young man or the young lady, look at the staff
20 recommendation. We also not only determine which facility
21 they're going to go to, what's their best need, depending on
22 their age, whether they be 12, 13, 14, or 18 years old. We can
23 take them up to 25 in Youth Authority.

24 And we determine which is best facility to go to. If
25 they're a sex offender, or a crime against property, or a crime
26 against person. And each individual school, as we call them --
27 and there are 13 around the state, 4 in Stockton, the rest
28 around the state -- and we determine which school to go to.

1 Could be the LEAD program, which was started by Senator Presley,
2 which the entire Assembly and Senate, and signed by the Governor
3 several years ago, which is a program where you use a short-term
4 program.

5 Then we decide the length also, by our rules, the
6 length of time. A judge may, for example, for an assault with a
7 deadly weapon, may give a term of eight years. But if there's
8 no bodily injury with our scale, that might only be what's
9 called a category three, which is three years in Youth
10 Authority. So, we give them those three years. We might add
11 another six months if we feel there was some other aggravation
12 involved, or some other injury involved, but not enough to make
13 it a category two. Then we send them to that facility for that
14 amount of time for both the training and the treatment.

15 SENATOR AYALA: After the official meeting with the
16 ward, you periodically meet with them again to see what progress
17 they're making?

18 MR. WILHOIT: Yes, sir. By law, every year, every ward
19 in the Youth Authority must have an annual review, and that is
20 done by the seven of us, including retired annuitants and board
21 reps.

22 SENATOR AYALA: You determine that for a period of time
23 whether he should continue in that program or another program?
24 Do you make a determination as well?

25 MR. WILHOIT: It's a cooperative thing. If the staff
26 comes at the annual review, comes with a review of the year
27 before, look at disciplinary actions, if there's been a good
28 record, if he or she has -- let me go back.

1 We assign certain programs they must take: the sexual
2 offender program; a formal-informal drug program; crimes against
3 women program; young men as a father program; all these
4 different programs. As they complete those, staff will come and
5 say, "This last year, Ward A has completed this, this, and this,
6 and we don't have the programs in this facility to add to his
7 further training and treatment, so we recommend that he or she
8 be sent to another facility." It may be, for example, if a
9 young man's at Karl Holton, which is primarily a drug program,
10 they do informal drug program there. They've completed that,
11 but they have no job skills. They'll say, "Would you approve or
12 agree to a transfer to Dewitt Nelson, which is also in Stockton,
13 for some job training programs, some kind of a trade."

14 SENATOR AYALA: Do many of these young folks end up in
15 the prison system, where they graduate to an adult prison?

16 MR. WILHOIT: Unfortunately.

17 SENATOR AYALA: Any follow-up on these young people
18 after they leave the Youth Authority?

19 MR. WILHOIT: They're on parole, and that's hoping
20 parole will keep a track on them, and keep them from falling
21 back into the error of their ways. I think all of us agree --
22 and I don't want to take the whole mike; turn to my colleagues
23 -- that the Youth Authority and the Youth Authority Parole Board
24 get these young people once the early system -- they have either
25 failed in the early system, the early system or society has
26 failed them. And they actually have no -- are not amenable to
27 treatment within the local jurisdictions.

28 This is where I see personnel -- I'll turn it over

1 shortly to my colleagues -- I see a short coming that has
2 developed over last several years. There are three missions of
3 the Youth Authority. We fall into that.

4 I must say in defense of Senator Presley, if I may,
5 from the very beginning, the relationship up until last
6 September between the California Youth Authority and the YOPB
7 has been poor at best. There were a lot the personal issues
8 going on. When Craig Brown was made the Director, and Senator
9 Presley made the Chairman of the Board, it became a very
10 cohesive unit, working together to reach the goal of the Youth
11 Authority.

12 That goal is really three-fold. Number one, the
13 protection of the public. Number two, the training and
14 treatment of the wards to be prepared to go back into society.

15 But another component I think is really missing at this
16 point -- and this is not so much directly with the Youth
17 Authority but it affects us to your question, Senator Ayala --
18 is, the Youth Authority working with local jurisdictions to
19 prevent crime.

20 Prevention efforts are a lot less expensive than
21 intervention efforts. Over the last five or six years, that has
22 been lacking, that cooperation at work between the Youth
23 Authority to help local governments to prevent crimes so that we
24 don't get the youthful offenders in the Youth Authority to begin
25 with.

26 SENATOR AYALA: If any of you folks have any changes to
27 make, what would they be to improve the system?

28 MR. VELLANOWETH: Roberto Vellanoweth.

1 If I may add, just to piggy-back, the most important
2 element, in my opinion, that we could add is in the school
3 system itself. I notice that my colleagues --

4 SENATOR AYALA: Local schools?

5 MR. VELLANOWETH: The local schools and the public
6 schools, to be more exact, because the private schools are doing
7 a pretty good job with the kids. They have a captive audience.

8 But the public schools, and specifically in the junior
9 high and the elementary schools, that's where I believe the
10 problems really start: the gangs, the drugs, and then getting
11 into the streets becomes part of their life-style.

12 And the parents are, in my opinion, the ones that have
13 to be really taking responsibility for those wards, for those
14 kids.

15 We need to, as Mr. Wilhoit stated, we need to really
16 get into the community programs and try to assist the parents as
17 well as the kids to make a better life for themselves. But we
18 need to have a whole bunch of role models out there. And I
19 think that's what very important and missing, in my perspective.

20 I was talking to Senator Ayala before about what I saw
21 happen. As a prior teacher, I saw a lot of opportunities, back
22 in the early '70s, teaching at Goethe Junior High School -- one
23 of the -- you know, a real tough area of Sacramento -- and they
24 had sports programs, they had educational extra-curricular
25 programs and activities. Then Proposition 13 hit us, as you all
26 know, and all of these programs all of a sudden went by the
27 wayside.

28 What it amounts to is more money. That's basically the

1 responsibility, I think, of all of us, to take responsibility
2 for those kids by providing them with more resources.

3 SENATOR AYALA: One more question, the adult prison
4 system is above capacity now over the state.

5 Has that also been experienced at the Youth Authority
6 level, crowded conditions?

7 MR. VELLANOWETH: Let me answer that, if you don't
8 mind, Doug.

9 We have noticed that the increase in youth, compared to
10 the decrease -- because, if you look at the latest figures from
11 the United States, it says that we're having a -- the crime
12 rates are going down in the adult population, but they're
13 increasing in the youth population.

14 So, we're going to be experiencing growth, while the
15 prison systems in general are going to be experiencing a
16 downward -- I guess a downward population.

17 SENATOR AYALA: When do you predict that's going to
18 happen?

19 MR. VELLANOWETH: That's a good question.

20 MR. WILHOIT: If I may on that, Senator.

21 I know last year during the budget year, there were
22 requests for 1500 more beds for the Youth Authority, and I think
23 that was authorized but the funds were not allocated. I think
24 that was up again this year. There is definitely a need for
25 more beds.

26 But from my perspective looking at this, and I have a
27 short period of time, although I was on the Citizen's Committee
28 for the Northern California Youth Center for a number of years,

1 when I was on the San Joaquin Board of Supervisors, having four
2 facilities in Stockton, it was very convenient.

3 But I had a respect, I've really grown a great deal of
4 respect for the staff of the Youth Authority, the everyday
5 staff, the line staff, the correctional officers, the youth
6 counselors, the parole officers, who work in the servant --
7 those are the ones who are dedicated who are really, I think,
8 when Patrick -- and I was very honored that he introduced me as
9 a dedicated public servant. Those are the ones that are
10 dedicated, with the lowering of the resources, the increase of
11 the bodies, yet their dedication and their work ethic has
12 increased ten-fold to try and serve these young people. They're
13 the ones that need the resources and the programs.

14 I think a real example that we're seeing of a program
15 that we as Board members are going to work with the Youth
16 Authority on is a pre-parole program, like we have in Paso
17 Robles. It's the Cuyucas Hall, to really prepare the young
18 people to go out on parole.

19 Right now, a young man might come before us out of
20 lockup, and he may be out of what's called the actual
21 confinement time. We don't have much choice about paroling;
22 that's one of the hearings we hear, too, is actual parole
23 hearings. He or she is not prepared to go on the street, but
24 yet because of the law, we have to let them out.

25 If there were a program where they could house these
26 kids, and give them some skills, pre-parole, for, say, even six
27 to eight weeks before their parole, it would help. But there's
28 not the funds.

1 So, there are needs like that. It's not all just
2 lockup; it's program monies that are needed.

3 SENATOR AYALA: I have no more questions, Mr. Chairman.

4 SENATOR BEVERLY: Any Member of the Committee have any
5 further questions? Senator Petris.

6 SENATOR PETRIS: For any of the members, what is free
7 venture program?

8 MR. WOOD: A good example of the free venture program
9 is the TWA program up in Ventura, where Ventura -- actually, the
10 wards of Ventura will be trained to work in being ticket
11 people. And actually, sometimes when you call for reservations
12 for TWA, you're probably talking to a ward at Ventura School.

13 And so, the free venture program trains them to do this
14 type of thing. They also pay them. I don't remember the
15 percentages, but a percentage of what they make goes into the
16 Victims Fund, a percentage goes into paying for their upkeep,
17 and then a percentage they get to keep.

18 In some of your cases where you have a person committed
19 for murder, and they'll do the seven years, and do it at
20 Ventura, we've had some cases where they have left Ventura
21 School with a Bachelor's degree, \$10,000 in cash from TWA, and a
22 guaranteed job.

23 So, there are a few. There's that one, then there's a
24 couple more down in YTS that deal with the assembly of parts and
25 manufacturing certain things.

26 SENATOR PETRIS: Does that cut the recidivism rate?

27 MR. WOOD: I don't know. I don't have any figures on
28 recidivism that I could quote. The Youth Authority would

1 compile those.

2 MR. WILHOIT: If I may, Senator, on that one.

3 When our whirlwind tour, when I first was appointed in
4 September, we spent some time in Southern California. If I
5 remember correctly, the recidivism rate in Youth Authority is
6 about 48 percent, roughly. In the free venture program, it's
7 about 23 percent, and that's rough figures. That's from just
8 memory, sir. So, it is much more successful.

9 SENATOR PETRIS: Thank you.

10 Question, do these three gentlemen get to vote on
11 whether Presley gets approved or not.

12 [Laughter.]

13 SENATOR BEVERLY: Just total unity.

14 SENATOR PETRIS: I'll withdraw the question.

15 SENATOR BEVERLY: Any further questions?

16 SENATOR AYALA: One more question.

17 What is the relationship between the Board and the
18 Director of Youth Authority? What is the relationship? Do you
19 meet with him daily, weekly, monthly?

20 SENATOR PRESLEY: Would you believe, the law requires
21 that we meet four times a year. It's in the law.

22 That was a shock to me, that it was in the law that the
23 Youthful Offender Parole Board and the California Youth
24 Authority, the higher eschelon people and the Board members, are
25 required by law to meet four times a year. But in fact, we meet
26 often.

27 SENATOR AYALA: Do you give directions to the Director,
28 or do you just sit?

1 SENATOR PRESLEY: It's just a -- the Board and the
2 Department are on the same level. It's a coordination thing
3 between the two.

4 SENATOR AYALA: You exchange views, but there's no
5 authority, one over the other?

6 SENATOR PRESLEY: That's right.

7 SENATOR BEVERLY: Is there anyone present who wishes to
8 testify in support of the nominees, or any one of them? Come
9 forward.

10 SENATOR PRESLEY: Mr. Chairman, I think everybody in
11 the room's in support.

12 MR. OBLEDO: My name is Mario Obledo, President of the
13 California Coalition of Hispanic Organizations.

14 We support all the nominees, specifically Senator
15 Robert Presley and Mr. Roberto Vellanoweth. They're both
16 distinguished and capable individuals.

17 Thank you.

18 SENATOR BEVERLY: Thank you, Mr. Obledo.

19 Anybody else.

20 Is there any opposition? The record will reflect that
21 there is no opposition present, and none has been received in
22 writing.

23 What's pleasure of the Rules Committee?

24 SENATOR AYALA: What kind of a motion, for all four?

25 SENATOR BEVERLY: You can move all four, then we'll
26 vote.

27 SENATOR AYALA: I'd like to move confirmation of all
28 four candidates.

1 SENATOR BEVERLY: Call the roll on Senator Presley.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye. Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye. Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Beverly Aye. Senator Lockyer. Four
11 to zero.

12 SENATOR BEVERLY: Ayes four-zero. We'll hold the roll
13 open for the Chairman.

14 CHAIRMAN LOCKYER: Lockyer Aye.

15 SECRETARY WEBB: Lockyer Aye, five to zero.

16 SENATOR BEVERLY: On Senator Presley, the motion is
17 five-zero.

18 Without objection, the same vote will be recorded for
19 the other nominees.

20 Thank you, gentlemen. Congratulations.

21 CHAIRMAN LOCKYER: On Mr. Martinez, if I may add myself
22 on to make it five-zero. Thank you, Senator Beverly and
23 Members.

24 [Thereupon. This portion of the
25 Senate Rules Committee hearing was
26 terminated at approximately 2:27 P.M.]

27 --ooOoo--

28

CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

21st day of May, 1996.


EVELYN J. MIZAK
Shorthand Reporter

302-R

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MONDAY, JUNE 3, 1996
1:57 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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16 MONDAY, JUNE 3, 1996

17 1:57 P.M.

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25 Reported by

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair
SENATOR ROBERT BEVERLY, Vice Chair
SENATOR RUBEN AYALA
SENATOR JOHN LEWIS
SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

BENJAMIN G. DAVIDIAN, Member
Alcoholic Beverage Control Appeals Board
MARTIN B. DYER, Member
Public Employment Relations Board
MICHAL C. MOORE, Member
State Energy Resources Conservation and Development Commission
JOSIAH L. NEEPER, Member
Public Utilities Commission
SENATOR STEVE PEACE
SALLY A. RAKOW, Member
State Energy Resources Conservation and Development Commission
SENATOR HERSCHEL ROSENTHAL

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Davidian is first then.

MR. DAVIDIAN: Good afternoon, Senator.

CHAIRMAN LOCKYER: Do you want to start with any kind of opening about what you've been doing in life, and why this job is interesting?

MR. DAVIDIAN: If I tell you about all the things I've been doing in life, I'm not going to get out of here in very good shape.

CHAIRMAN LOCKYER: You seem to be an all-purpose hitter.

MR. DAVIDIAN: This is actually an enjoyable job I have now. It was the first of all of them.

CHAIRMAN LOCKYER: Fair Political Practices, or ag. labor?

MR. DAVIDIAN: I enjoyed them immensely. They're wonderful places to be from.

CHAIRMAN LOCKYER: What are your responsibilities?

MR. DAVIDIAN: The Alcoholic Beverage Control Appeals Board really acts sort of as an administrative court of appeals. If an entity that has a liquor license has a problem, and the ABC has a difficulty with them, it will go before an administrative law judge. If one party or the other doesn't like what came out of that hearing, the matter comes up to the ABCAB, and we listen to any argument and review the briefs much like an appeals court.

It's an interesting issue. And some of the hearings,

1 well, I was just commenting to some staff that are present here
2 today that a couple of the hearings should almost have been
3 X-rated. The breadth of issues that are involved in the liquor
4 licensing board, as far as topless bars and liquor stores, so on
5 and so forth, you see quite a broad cross section of California
6 come into those hearings.

7 We have a lot of issues where petitioners or people are
8 protesting the placement of a liquor license in a neighborhood
9 near a school, near a church, and so on and so forth. So, there
10 are many issues that come before us.

11 CHAIRMAN LOCKYER: Almost one out of five, it looks
12 like from looking at the numbers. Of the administrative
13 rulings, almost a fifth of them get appealed.

14 MR. DAVIDIAN: That's my understanding.

15 We've got quite a work load. In fact, we were just
16 looking. I think we have eleven cases in Sacramento day after
17 tomorrow. We have seventeen or eighteen in Los Angeles in July,
18 and eighteen in August. So, it's a full day when you stack them
19 up like that.

20 More often than not, an attorney will appear on behalf
21 of the petitioner, and they'll file briefs.

22 CHAIRMAN LOCKYER: I note that I guess there's been a
23 decision to have more of an in-house administrative hearing
24 procedure, rather than rely on the State Office of
25 Administrative Hearings for the initial --

26 MR. DAVIDIAN: The initial part would be handled by the
27 ABC itself before it gets up to the Appeals Board.

28 CHAIRMAN LOCKYER: Is there something that persuades

1 people that that will be more efficient, or do you get a
2 different result than going through the Office of Administrative
3 Hearings?

4 MR. DAVIDIAN: I have to say I'm not really prepared to
5 discuss that because that would be down at the ABC level before
6 it would get to us.

7 CHAIRMAN LOCKYER: So, they haven't mentioned it.
8 That's not part of your job to do that.

9 MR. DAVIDIAN: That's right.

10 CHAIRMAN LOCKYER: Are there questions from Members.
11 What are the kinds of issues that seem to take the bulk
12 of the time, or are the most contentious that you get? Are
13 there repeating issues, sort of, or no?

14 MR. DAVIDIAN: Well, you'll have problems like, if a
15 member -- if a person with a license associates with somebody
16 else who has a problem with the law, a crime of moral turpitude,
17 the license is, of course, at that point then called into
18 question, because that's not what you want to have.

19 So, we've had a number of times in the last several
20 months where one of the licensees will suddenly find themselves
21 involved in dealing some drugs, or receiving stolen property,
22 that type of thing. And then, of course, we start talking about
23 revocation of the license, and the other partners don't like
24 that very much, and so, that can be a problem.

25 One of the problems we've had a lot lately are these
26 juice bars, and so forth. Theoretically, if they're -- if
27 there's going to be complete nudity, you can't have alcohol
28 served there. And so, what they have is, they have licensees

1 that have --

2 CHAIRMAN LOCKYER: Wrestlers?

3 MR. DAVIDIAN: Yeah, all sorts of --

4 CHAIRMAN LOCKYER: I think we had mud wrestlers in my
5 area that was big problem or something.

6 MR. DAVIDIAN: They're wrestling in any number of
7 mediums at this point, Senator. It's -- well, we don't want to
8 get into all of them.

9 You see, when they have -- they have a certain amount
10 of nudity allowed, but when they go beyond a certain level, then
11 it becomes an issue on the license or the expansion of a --

12 CHAIRMAN LOCKYER: Do you actually hear many complaints
13 like that?

14 MR. DAVIDIAN: Yes, we do. We get those, I'd say,
15 about once a month, couple times every three months, something
16 like that.

17 CHAIRMAN LOCKYER: How about where there's been the
18 drug or stolen property? How often do those come up?

19 MR. DAVIDIAN: We see at least one or two of those a
20 month. Then we'll have problems with assemblies of unsavory
21 characters around a liquor store kind of a thing. That's a
22 fairly common issue. And then petitioners who don't want to see
23 a liquor license to a convenience store when there's one a block
24 away, or there's a church there, a school there, that type of
25 thing. That's fairly common as well.

26 CHAIRMAN LOCKYER: Now, I guess there's some
27 anticipation that your appeals, the quantity of appeals is
28 likely to grow. Is that what they're expecting to have happen?

1 MR. DAVIDIAN: My understanding is that one could
2 probably expect that that will continue.

3 When I first started about eight months ago, it was
4 common to have eight, nine or ten, and all of a sudden, we're in
5 the fifteen, sixteen, eighteen.

6 CHAIRMAN LOCKYER: At each meeting?

7 MR. DAVIDIAN: Yes, at each meeting. And that makes
8 for a full day, because if they send their attorneys, then of
9 course we'll have oral argument and the briefs. We'll have
10 briefs stacked up like that for one meeting.

11 CHAIRMAN LOCKYER: We're preparing you for your next
12 assignment on the Court of Appeals.

13 [Laughter.]

14 MR. DAVIDIAN: No comment. I don't look good in a
15 black dress, Senator.

16 CHAIRMAN LOCKYER: You're not into cross-dressing?

17 MR. DAVIDIAN: I don't think it would work.

18 CHAIRMAN LOCKYER: Is there anything anyone has talked
19 about as a way of handling all those anticipated growth in
20 appeals?

21 MR. DAVIDIAN: We really -- no one's addressed that to
22 me.

23 CHAIRMAN LOCKYER: Work you harder.

24 MR. DAVIDIAN: We just do whatever comes along, and the
25 stack just seems to grow.

26 I think it is a bit cyclical.

27 We're now trying a process where, instead of just
28 holding the hearings in San Francisco and Los Angeles, which is

1 what they've been doing for some period of time, we're trying to
2 help out some of the petitioners who have to travel a great
3 distance, and we're holding the hearings a little closer in some
4 of the more local communities, more centralized locations in the
5 valley, or in Orange County, or wherever, to try to make it a
6 little easier for them to get there, and for some of their
7 attorneys to get there, because it costs them a great deal of
8 money to have to send an attorney from Fresno to San Francisco,
9 for example, to appear on a hearing. So, we will try to bring
10 the hearings to them when we can reasonably do that.

11 CHAIRMAN LOCKYER: How often do you move them around
12 like that?

13 MR. DAVIDIAN: Well, we're just trying to experiment a
14 little bit with that. In fact we're having our first meeting in
15 Sacramento this week. Usually it's either -- it's two months in
16 L.A. then once in San Francisco, and two months in L.A. and
17 back.

18 So, this time we have number of cases in the Valley, so
19 we're trying it here in Sacramento and see how that works. And
20 we have talked about maybe doing Orange County. I think it's
21 next time instead of downtown Los Angeles. See how that works
22 out.

23 If we have a spate of cases that come in from, say, San
24 Diego, we might consider holding one there, or in Fresno, or
25 Bakersfield, or wherever it would make the most sense for
26 everybody to get to, and where we can get all our commissioners
27 and so forth there.

28 Being such a small group, it's not hard to move us

1 around.

2 CHAIRMAN LOCKYER: Good thought, to be consumer
3 friendly in that manner.

4 Senator Ayala.

5 SENATOR AYALA: Let me see if I understand how it
6 works.

7 If I am turned down, or if I'm a business person that
8 has liquor on the premises or off premises, and the ABC suspends
9 my license, if I'm not happy you come to your board? You're the
10 appeal board.

11 MR. DAVIDIAN: The appellate level, right.

12 SENATOR AYALA: Of what the ABC does.

13 MR. DAVIDIAN: Right.

14 SENATOR AYALA: And how many of those hearings do you
15 have a year?

16 MR. DAVIDIAN: Of that particular type.

17 We'll have anywhere -- I think the lightest meeting
18 we've had in the time I've been there, we had around eight or
19 ten cases, but we can have as many as eighteen. In fact, we
20 could go beyond that. It's whatever the caseload is, we hear.
21 It could be twenty, twenty-two.

22 We might actually have to go into a second day,
23 although that's not happened in the time I've been there, and I
24 don't know that last time it was that they had to do that.

25 SENATOR AYALA: According to the information we have,
26 two-thirds of those appeals come from the Los Angeles regional
27 area.

28 MR. DAVIDIAN: A great deal. Most of our meetings are

1 in Los Angeles.

2 SENATOR AYALA: So you are in that area quite a bit?

3 MR. DAVIDIAN: Yes. We -- two out of three meetings
4 will be in the Los Angeles metropolitan area or Orange County.

5 SENATOR AYALA: Thank you, Mr. Chairman.

6 CHAIRMAN LOCKYER: Senator Lewis.

7 SENATOR LEWIS: Do you hear appeals from both sides of
8 the issue, from those who both have licenses rejected, and then
9 also those that are upset that you granted licenses?

10 MR. DAVIDIAN: More often than not, our cases are
11 enforcement matters where somebody has been granted a license
12 and there's a problem with the license.

13 Yes, we hear from all sides.

14 SENATOR LEWIS: In terms of those issues where the
15 question is one of over concentration of licenses, or perhaps
16 it's more like a zoning issue, if there's no other complaints
17 brought forth in terms of the behavior of the licensee, or
18 anything like that, what's been the kind of overall, if you can
19 give me like a percentage, track record of what percentage of
20 the time you end up finding with the licensee as opposed to
21 those people that are complaining?

22 MR. DAVIDIAN: I would say more often than not, if
23 there is actually a reasonable opposition, or protest, more
24 often than not we'll go with the protest, if there's a
25 reasonable protest, and if there are multiple protests.

26 Often times, you'll get a protest from somebody, we had
27 one a couple of months ago, where a fellow didn't want a liquor
28 store to be selling liquor across from his condominium complex

1 because he was afraid that the parking could be a problem if the
2 Lotto jackpots got too high, and that people would be stopping
3 in the middle of the street and running in.

4 Well, it really hadn't happened, but he was concerned
5 about that. Yet, everybody else in the condo complex wanted
6 this place to have a liquor license.

7 So, in that case, where there was one protest -- and
8 the fellow had moved out, incidentally. He still owned the
9 place, was renting it. In that case, we went along and allowed
10 the license because everybody else seemed to be pleased with
11 it.

12 But in a case where there are, you know, several
13 protestors, then we will, more often than not, if there's a
14 reasonable argument there -- church, school, quiet neighborhood,
15 already two or three liquor stores in the area, or restaurants,
16 or whatever it may be -- then we'll go along with that.

17 It's a delicate balancing act, because you have
18 property right versus, you know, the land owner, and the right
19 of commerce, so you don't want to stop that, either, but you
20 have to draw a balance.

21 SENATOR LEWIS: Would that rule of thumb also apply,
22 let's say, to gas stations who want to expand and have like a
23 little convenience store.

24 MR. DAVIDIAN: A convenience store is a very common
25 issue that we have as to whether or not the convenience store on
26 the south side of the road should be permitted in that there is
27 a convenience store on the north side of the road, just down
28 half a block or so, that's already selling beer and wine, for

1 example. So, those issues do come up.

2 We go all the way from a beer and wine license at a
3 convenience store, all the way up to, you know, fine wine;
4 whether or not you should allow a liquor store that will
5 concentrate primarily on very expensive wines in a particular
6 neighborhood. So, it runs the gamut.

7 CHAIRMAN LOCKYER: Senator Petris.

8 SENATOR PETRIS: I didn't understand the impact of the
9 use of a dancer in a bar. It's a very important social
10 question.

11 MR. DAVIDIAN: Would that be with the wrestling or
12 without?

13 SENATOR PETRIS: Without.

14 I got the impression that that immediately drew the
15 attention of the agency to that, and they took another look at
16 liquor license, or they upped the standards? I don't
17 understand. What is the problem?

18 MR. DAVIDIAN: If there is -- if a place is going to
19 allow nude dancing, for example, they can't get a liquor
20 license. There are rules, very specific rules about what parts
21 of the body can be displayed, and what kind of simulated
22 dancing, whatever kind of action. It's very specific and rather
23 explicit rules about how that can be done.

24 So what you will have is, you'll have somebody that'll
25 have a place, a nightclub, and they'll allow exotic dancing,
26 and they have liquor license. But the exotic dancing gets a
27 little too exotic, and then all of a sudden, certain things are
28 done, or parts of the body displayed, or conduct on the dance

1 floor, or on the stage, rather, that will take them beyond the
2 limits of the law. That's when the problem comes in.

3 You'll also have the problems in that kind of a
4 situation where there is -- where employees of the bar are
5 actually doing -- are soliciting drinks, for example, which is
6 illegal. You know, Miss Kitty on Gunsmoke, you can't do that
7 anymore. You know, you can't walk up to somebody and say, "Hey,
8 why don't you buy me a drink," and then they get a kick-back for
9 the drink. That's not permitted.

10 So, you'll get that type of conduct, and sometimes
11 it'll be the exotic dancer that'll be out soliciting the drinks.

12 SENATOR PETRIS: I thought Miss Kitty was the owner.

13 MR. DAVIDIAN: Yes, but the owner, but she was also --
14 she had lots of people that were helping her out, as it were.

15 CHAIRMAN LOCKYER: Senator Ayala.

16 SENATOR AYALA: Your commission here determines whether
17 an exotic dance gets too exotic?

18 CHAIRMAN LOCKYER: How much field work do you do.

19 [Laughter.]

20 MR. DAVIDIAN: You know, I rather thought that these
21 questions would come up. I brought photographs, Senators.

22 [Laughter.]

23 MR. DAVIDIAN: I'll tell you, some of the hearings get
24 interesting, and the briefs are, as it is were.

25 SENATOR AYALA: Is there a criteria, or is it just in
26 the eyes of the beholder that you determine that it's too exotic
27 or not?

28 MR. DAVIDIAN: No, it's very specific in the law as to

1 what parts of the body can be shown, or what types of conduct is
2 permitted. It's very specific.

3 SENATOR AYALA: It's not up to the people who are
4 listening to it. It's in the law?

5 MR. DAVIDIAN: Yeah, and I'll tell you, when you read
6 some of these briefs, they're very specific about what kind of
7 conduct is permitted and what isn't permitted. And generally
8 speaking, the argument is, well, she didn't exactly do it that
9 way, or he didn't really touch her. You don't want to hear more
10 about it here in this mixed setting, but it's a very -- they can
11 get very explicit at the time of hearing.

12 What happens is, the law is very, very specific on what
13 you can and cannot do in a licensed facility.

14 SENATOR AYALA: Is the public invited to your hearings?

15 MR. DAVIDIAN: Yes, we generally ask for a certain age
16 limit. But anybody can show up for a hearing.

17 CHAIRMAN LOCKYER: Other questions?

18 MR. DAVIDIAN: I have some specific places, if you want
19 a field trip.

20 CHAIRMAN LOCKYER: Is there anyone present who'd wish
21 to make any comment?

22 SENATOR BEVERLY: Move we recommend confirmation.

23 CHAIRMAN LOCKYER: Well, I just had a couple more
24 question. Actually, I think they're probably more personal, and
25 I apologize in advance for getting on that side of things, but I
26 think it's probably necessary because, certainly, your
27 education, your professional experiences, your approach and
28 demeanor with respect to the tasks that we expect to be handled

1 by the Control Board are appropriate ones for that work.

2 And so, the question I want to ask, really, first is to
3 try to understand -- I have the convenience of your vita in
4 front of me. Some of these dates you may not recall -- but five
5 years in the mid-'80s of working in the Wilke firm, et al.

6 MR. DAVIDIAN: Yes.

7 CHAIRMAN LOCKYER: And then ag. labor for a couple of
8 years, and then INS for several years.

9 MR. DAVIDIAN: A couple of years.

10 CHAIRMAN LOCKYER: Then FPPC for four years.

11 MR. DAVIDIAN: Full term.

12 CHAIRMAN LOCKYER: When did that end, FPPC?

13 MR. DAVIDIAN: A year ago January, so it's been about
14 fifteen, sixteen months.

15 CHAIRMAN LOCKYER: January of '95.

16 MR. DAVIDIAN: That would have been '95, yes.

17 CHAIRMAN LOCKYER: And then, I guess, right away back
18 to Wilke. Was there a gap there?

19 MR. DAVIDIAN: I went back very shortly after I left.
20 I actually wasn't going to do that, but I went back and had a
21 visit with them after I had left the state, and it was just kind
22 of like going home. It's a good group of people, so I went back
23 as of counsel.

24 CHAIRMAN LOCKYER: But you did legal work with them, or
25 what was your status?

26 MR. DAVIDIAN: As of counsel. I was a partner there
27 when I left in '87 to go to the Agricultural Labor Relations
28 Board, and I came back as of counsel.

1 CHAIRMAN LOCKYER: What does that mean with respect to
2 that work? It's not a mystery where I'm probably headed, but
3 there was some controversy with your legal work, as some form of
4 member of this firm, some controversy with respect to the legal
5 work with people who had matters before FPFC, and the
6 appropriateness of the former chair of that body handling legal
7 matters before it.

8 Could you just talk about that?

9 MR. DAVIDIAN: Sure. Of counsel means I'm not an
10 equity partner in the firm. That's all it is. There is not
11 particular rank in the firm, other than as a partner, and
12 associate. And of counsel is generally a senior lawyer who does
13 not have an equity interest in the firm.

14 CHAIRMAN LOCKYER: You've now explained what I am.
15 That's my status also with my law firm. It's always a big
16 mystery around here what it means. It means nothing. It means,
17 "Hi, nice to see you."

18 MR. DAVIDIAN: There's a very significant meaning to
19 it. You get paid well, but you don't have to go to the 7:00
20 a.m. partnership meetings. That's the main thing.

21 CHAIRMAN LOCKYER: You could get paid? Oh, you're
22 telling me something else new.

23 MR. DAVIDIAN: Senator, you need a lawyer. I can help
24 you on this. There are labor laws in this state.

25 CHAIRMAN LOCKYER: But you would handle individual
26 cases?

27 MR. DAVIDIAN: Yes, and I have clients.

28 CHAIRMAN LOCKYER: How many did you have that involved

1 the FPPC during that year?

2 MR. DAVIDIAN: It's hard to say.

3 CHAIRMAN LOCKYER: Actually, I guess it wasn't a year
4 because you were appointed to the Appeals Board after several
5 months.

6 MR. DAVIDIAN: Yes, it was several months later.

7 It's really hard to say, but -- because I have a very
8 broad practice. I also represent -- I'm doing a lot of what I
9 used to do before I got into government. I represent doctors in
10 medical malpractice cases, for example. I do general
11 litigation. But I had several cases over there at the FPPC.

12 But the important thing is that the revolving door
13 provisions apply specifically to -- you have a one-year
14 revolving door provision as far as lobbying or trying to
15 persuade administrative action. And there's a lifetime ban on
16 getting involved in any case in which I was involved or there at
17 the FPPC when I was Chair of the FPPC. So, those I can't ever
18 get involved with.

19 CHAIRMAN LOCKYER: If you were involved, you can't
20 touch those.

21 MR. DAVIDIAN: Can't touch those, no.

22 CHAIRMAN LOCKYER: But as a lawyer, there's no
23 appearing for a client, there is no one-day ban in the law?

24 MR. DAVIDIAN: For enforcement proceedings that were
25 not underway at the time.

26 If it was being investigated before I left, see, I
27 wouldn't necessarily know if it was being investigated, so the
28 first thing I do if I have a potential enforcement case is, I

1 will contact them and say, "Was anyone doing anything on this
2 while I was still there?" If they were, it goes somewhere else.
3 I can't touch it. If they weren't, then it's a case that I
4 could take.

5 Enforcement cases are specifically exempt. It's the
6 administrative action cases, matters, that are covered by the
7 revolving door. So that -- we very carefully avoided getting
8 involved in anything like that.

9 CHAIRMAN LOCKYER: So, administrative matters.

10 MR. DAVIDIAN: Administrative action, I think, is what
11 it says.

12 CHAIRMAN LOCKYER: What is that?

13 MR. DAVIDIAN: You know, it'd be like, it's easier to
14 say what it isn't than what it is.

15 In the enforcement case, what I did for the year that I
16 was under the revolving door, the only types of things I did
17 were enforcement cases. I never went into the FPPC offices in
18 that year. I never went to the public hearings, even though I
19 could have, I never went there.

20 CHAIRMAN LOCKYER: So, you would show up at the Board.

21 MR. DAVIDIAN: I wouldn't go to the Board. I stayed
22 away for a year.

23 CHAIRMAN LOCKYER: I mean the Commission.

24 MR. DAVIDIAN: Well, the Commission, yes.

25 CHAIRMAN LOCKYER: But if you're involved in an
26 enforcement action, don't you have to go to the Commission?

27 MR. DAVIDIAN: Generally, when -- we're at the staff
28 level before you get up, you know. I would not -- I wouldn't go

1 into the offices and deal with that. We dealt with it either on
2 the telephone. We dealt with it by mail, that type of thing.

3 But I did not want to have the appearance of showing
4 up there during that one year, and I didn't do it. I stayed
5 away.

6 CHAIRMAN LOCKYER: What's the difference now?

7 MR. DAVIDIAN: I'm sorry.

8 CHAIRMAN LOCKYER: Between enforcement and --
9 enforcement you could do.

10 MR. DAVIDIAN: Right.

11 CHAIRMAN LOCKYER: Administrative action you couldn't?

12 MR. DAVIDIAN: You know type of thing. I would not go
13 in to try to establish a new -- how would I put this -- if
14 somebody came to me and said, "I'm a Legislator. Can I do X, Y
15 or Z?" I wouldn't go in and try to get a formal advice letter,
16 or something like that, and try to persuade them this is how you
17 should approach this. I stay away from that type of thing.

18 Enforcement cases are a different ball game because you
19 actually have a hearing on the matter before an administrative
20 law judge, and so on, if it goes that far. Otherwise, you might
21 settle it at some point in time.

22 I'm trying to remember now, I don't know if in that one
23 year we had -- I imagine we probably settled some things, but
24 anything that was settled would have to come before the
25 Commission itself for a full vote, and it would be a public
26 vote.

27 You can't settle anything with the FPFC in private,
28 other than in a civil action, in which case it has to be made

1 public immediately thereafter.

2 CHAIRMAN LOCKYER: Was there any dispute about this
3 distinction between administrative and enforcement?

4 MR. DAVIDIAN: No one's -- no one has indicated that to
5 me.

6 I know there was a flurry of activity when I
7 represented a former member, at the time, a member of the
8 administration where, they said, "You can't do that." And I
9 said, "Why not?" And they looked, and then, "You're right. You
10 can do that."

11 Then there was an effort at that time to explore
12 changing the law to say you couldn't do that, but that fell
13 apart because it would extend -- well, it would almost have to
14 extend to everybody, even staff in the Legislature. It became
15 an untenable -- from what I'm told. I wasn't part of that --
16 but it became an almost untenable change in the law.

17 So, the thing that I was careful to do was to make sure
18 that whatever it was that I undertook was not going on when I
19 was Chair of the FPPC. If it started afterwards, and the law
20 was clear that it not a problem, I would become engaged, but
21 only after going through that type of analysis.

22 CHAIRMAN LOCKYER: Now, you continue to be of counsel
23 at Wilke.

24 MR. DAVIDIAN: Yes.

25 CHAIRMAN LOCKYER: Because the ABC Appeals Board is not
26 deemed full-time employment?

27 MR. DAVIDIAN: Right, that's correct.

28 CHAIRMAN LOCKYER: So, you're able to do both.

1 MR. DAVIDIAN: That's right.

2 CHAIRMAN LOCKYER: Are there any rules with respect to
3 clients your law firm is allowed to handle that might have an
4 ABC issue?

5 MR. DAVIDIAN: We would never take an ABC issue at the
6 firm. I have told the firm, even if the firm could, because I'm
7 not an equity partner, I have informed the firm that as long as
8 I'm at the ABC, I do not want an ABC matter there.

9 As far as I know, no one's tried to hire us for that.
10 We've never had anything like that. I've never had to recuse
11 myself from anything. I expect as long as I'm at ABC, that's
12 the way it's going to continue.

13 CHAIRMAN LOCKYER: Additional questions, anyone.

14 I think I heard a motion.

15 SENATOR BEVERLY: Move we recommend confirmation.

16 CHAIRMAN LOCKYER: We have recommended confirmation.
17 Call the roll, please.

18 SECRETARY WEBB: Senator Ayala.

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye. Senator Lewis.

21 SENATOR LEWIS: Aye.

22 SECRETARY WEBB: Lewis Aye. Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Petris Aye. Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

27 CHAIRMAN LOCKYER: Aye.

28 SECRETARY WEBB: Lockyer Aye. Five to zero.

1 CHAIRMAN LOCKYER: Good luck.

2 MR. DAVIDIAN: Thank you, Senators. I'll tell you
3 about those places a little later on.

4 [Laughter.]

5 CHAIRMAN LOCKYER: Mr. Dyer, if you'll come up. Howdy.

6 MR. DYER: Howdy. How are you, Senator?

7 MR. CHAIRMAN: Welcome back.

8 Do you want to sort of start with any explanation of
9 why you like this job, or do you want us to turn you down and
10 free you from this burden, or what you think here?

11 MR. DYER: I'm reluctant to try to make the Public
12 Employment Relations Board sound as if it's as stimulating an
13 assignment as the Alcoholic Beverage Control Commission may be.

14 I love the job. It's about resolving very, very
15 difficult issues involving the rights and responsibilities of
16 public employees, public employers, and it's about our
17 responsibility to try to make the system of labor negotiations
18 work for the people of California.

19 I have had an opportunity to visit with key staffers
20 and individual Members of this committee. I would prefer to
21 proceed by answering any questions you may have.

22 CHAIRMAN LOCKYER: Let me start by just focusing in for
23 a minute on charter schools.

24 Since the law allows for a charter school to exempt
25 themselves from collective bargaining laws, I don't know if they
26 have to notify anybody when they do that? Would you know how
27 many have done that?

28 MR. DYER: I do not, Senator, know how many have done

1 that. I do know that the statutes provide for charter schools
2 to operate outside of the Educational Employment Relations Act.

3 No charter school case has come before PERB, although
4 the court system has historically asked PERB to first determine
5 whether or not PERB has jurisdiction over any issue, because it
6 might spill over into another area, and the courts have asked
7 PERB to do that because the courts have not chosen to develop
8 the expertise in labor law that PERB is asked to develop.

9 I would emphasize that we have not yet seen any charter
10 school case. The formation of a charter school involves the
11 teachers, the community, the parents, the school board, and it
12 should be in that process, as I understand it, that labor
13 relations and relationships between the district and the
14 teachers and the classified employees would be spelled out.

15 Does that respond to your question?

16 CHAIRMAN LOCKYER: Partly. It hasn't come before you
17 so far.

18 MR. DYER: That is correct.

19 CHAIRMAN LOCKYER: I guess it would only come up if
20 there were a dispute, maybe, the claim of an unfair practice, or
21 something that would be germane to your duties.

22 What would make it come before you if they did exempt
23 themselves?

24 MR. DYER: I would say it's like playing with fire,
25 speculating about hypotheticals.

26 Someone could bring a case to us involving -- well, I
27 don't think we'd -- actually, our board agent would turn the
28 case down, and then there could be an appeal to PERB, saying

1 that this teacher at this charter school is somehow involved, or
2 this district at a charter school is somehow involved in issues
3 which PERB has a right to decide and an obligation to decide.
4 Then, we would either look at the facts of that individual case,
5 and look at the Education Code and the charter school statute
6 and see if, for any reason, the Education Code is not clear.

7 If we were to make a decision that was not -- any
8 decision from PERB is appealable to an appellate court.
9 Normally on a jurisdictional issue, four or five times a year,
10 someone will appeal a PERB case to the appellate court system.
11 Less than once a year the appellate court will take the case and
12 make some contrary decision.

13 We're dealing with hypotheticals here, at least from my
14 point of view, in that no charter school issue has come to us.
15 We recognize the fact that charter schools are meant to be
16 community schools and independent.

17 I say "we", I do.

18 CHAIRMAN LOCKYER: It may be interesting to note that
19 something like 20 percent of all the charter schools are home
20 instruction. I don't know that people have thought about that
21 when we created the charter school mechanism, and especially if
22 the Governor wants to give every school \$50,000, this may
23 present an interesting problem with the home instruction
24 so-called schools that have no educational quality or competence
25 requirements, or testing requirements, or anything. They just
26 opt out.

27 SENATOR PETRIS: Not even an enrollment number?

28 CHAIRMAN LOCKYER: No, home instruction.

1 So, no unfairs or experience with that.

2 Do you have any sense of whether the law needs work
3 that you are engaged in working with? Are there problems that
4 you wish we'd re-examine the basic codes governing your
5 activities?

6 MR. DYER: I've been at the Board for six months, and I
7 do not at this point -- have not felt that it was my
8 responsibility to change the law.

9 I've got 29 years in Sacramento trying to interpret and
10 implement the will of the Legislature. I don't think I was,
11 again, asked to try to change the law.

12 I do not have any sense that the law needs to be
13 changed right now.

14 Our workload is heavy, and I think appropriate. We
15 have cut our staff and our budget by more than 50 percent in the
16 last five years. We have no significant backlog. We finished
17 last fiscal year with 15 cases on the docket. I think we will
18 finish this year with less than 15 cases on the docket.

19 I'm not prepared at this point, and I don't know that I
20 will be prepared, to recommend any changes in the law.

21 CHAIRMAN LOCKYER: If they're not obvious to you, I
22 think it's always fair for us to learn from actual experience,
23 whether there seems to be glitches or inefficiencies. So, any
24 time you think you see something, you can always feel invited to
25 let us know.

26 MR. DYER: I'm sure there will be something that could
27 be better.

28 CHAIRMAN LOCKYER: Are there other questions from

1 Members?

2 Senator Ayala.

3 SENATOR AYALA: I'd just like to ask, what are the most
4 pressing issues you have before the Board at this time?

5 MR. DYER: Probably the most news worthy issue, one
6 which will become news worthy, is a case involving teaching
7 assistants and research assistants at the University of
8 California. It's come to the Board on appeal.

9 The issue is whether or not the teaching assistants and
10 research assistants are students and are thus not involved --
11 need not be involved in collective bargaining, or are they
12 employees of the University, and do they thus have collective
13 bargaining rights.

14 SENATOR AYALA: Do you have a backlog at all in cases?

15 MR. DYER: No, we do not, Senator. We have a goal for
16 turning around each case in 90 days, and we are satisfying that
17 time schedule right now. Thank you.

18 CHAIRMAN LOCKYER: This may be an old number. I note
19 in our materials that several years ago, the observation was
20 made that it took almost five times as long in California as in
21 New York to issue a decision.

22 They can't be doing it in 15 days, I guess, so that
23 must be an old comment.

24 MR. DYER: It's not a comment I've heard before,
25 Senator. I'd be happy to get an answer to the question for you.
26 I frankly don't have a clue.

27 CHAIRMAN LOCKYER: Actually, 18 days would be
28 one-fifth.

1 MR. DYER: Our decisions at the Board level involve at
2 least three members of the Board on each decision. We first
3 issue a proposed decision memo, summarizing the case to each of
4 the other Board members. And each member is given an
5 opportunity to respond to that.

6 We issue an initial draft. There may be a dissent. It
7 is a time consuming process, but one where every member is there
8 everyday. It moves right along. It's a judicious process that
9 is frankly completed within reasonable timeframes.

10 CHAIRMAN LOCKYER: Is there any personal philosophy
11 that you may have regarding the appropriateness of binding
12 arbitration, or a public employee's right to strike? Are either
13 of those matters relevant in what you do as a member of the
14 Board?

15 Do I need to ask you how you feel about those kinds of
16 matters?

17 MR. DYER: I'm happy to answer your question. You
18 don't need to. I am comfortable with my understanding of the
19 law at this point, which says that there are situations, there
20 can be situations in which public employee strikes can be legal.
21 There are also situations in which the courts may find, and PERB
22 may find that it's inappropriate or illegal to strike.

23 Certainly, public employee organizations and public
24 employers are entitled to enter into agreements calling for
25 binding arbitration.

26 I say "certainly". That's a philosophical statement.
27 My legal advisor's in the audience.

28 CHAIRMAN LOCKYER: Is there anyone present that wishes

1 to comment for or oppose the nomination.

2 What's the pleasure of the Committee? Senator Petris.

3 SENATOR PETRIS: Move.

4 CHAIRMAN LOCKYER: Move confirmation, recommending
5 confirmation. Call the roll.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: Aye.

8 SECRETARY WEBB: Ayala Aye. Senator Lewis.

9 SENATOR LEWIS: Aye.

10 SECRETARY WEBB: Lewis Aye. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye. Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Lockyer Aye. Five to zero.

17 MR. DYER: Thank you.

18 CHAIRMAN LOCKYER: Mr. Moore, Energy Resources
19 Conservation and Development Commission. Good afternoon.

20 MR. MOORE: Good afternoon, sir.

21 CHAIRMAN LOCKYER: Did you want to start with my
22 opening comments? We always welcome it, if you care to.

23 MR. MOORE: Mr. Chairman, I have some very brief
24 opening remarks I'd like to make.

25 First of all, I'd like to say that I'm honored to be
26 here in front of you and to be undergoing this process.

27 I'm Michel Moore, and I was appointed by Governor
28 Wilson on October 1, 1995, to fill the unexpired term of Richard

1 Bilas, who returned to the academic community to resume
2 teaching.

3 The Warren-Alquist Act requires Commissioners to hold
4 specific skills and background qualifications for nomination to
5 their seats, and I occupy the seat designated for an economist.
6 As an economist, my background reflects a mix of academic,
7 private, and public sector work. I obtained an undergraduate
8 degree from Humboldt State University, a Master's Degree in land
9 economics from U.C. at Davis, and I'm currently a Ph.D.
10 candidate in economics from the University of Cambridge in the
11 United Kingdom.

12 I've taught courses in economics at the Monterey
13 Institute of International Study, U.C. at Davis, and at
14 Cambridge.

15 I was previously elected to two terms as a County
16 Supervisor in Monterey County, served as a Deputy Director for
17 Local Government in the Deukmejian administration, and as
18 principal economist for Landmark Land Company prior to returning
19 to Cambridge for my Ph.D. research.

20 My previous principal research areas include local
21 government, fiscal impacts, and the long-term costs implied by
22 conversion of agricultural lands adjacent to or near urban
23 areas.

24 Since joining the Energy Commission six months ago, my
25 primary responsibilities have included being presiding member of
26 the Energy Efficiency Standards Committee, and second member on
27 the Fuels Committee, and second member on the Biennial Report.

28 I'd be happy to answer whatever questions I can for

1 you, sir.

2 CHAIRMAN LOCKYER: Thank you.

3 I guess, perhaps, a place to begin that might be mostly
4 academic, but I'm not sure, and that's the whole current
5 discussion of electrical restructuring. I guess the Commission
6 has a role in at least general research and planning for energy
7 needs.

8 Do you see that role being impacted in any way by the
9 current discussion and orders from the PUC?

10 MR. MOORE: Yes, sir, I do. I think that the
11 Commission -- if you'll permit me just a bit of history. I'm
12 going back into the mid-'70s -- defined its role as the siting
13 of new energy projects, the arbitor of what was seen, at least
14 at that time, as a burgeoning demand for, and construction
15 demand for nuclear projects. It basically defined their front
16 end role, and they've evolved from there, especially in terms of
17 the forecasting activities, and the research and development
18 activities that we pursue.

19 I think that in terms of the CPUC and their
20 restructuring decision, that our role has been less than clear.
21 I'm not convinced at this point that we have effectively defined
22 it, but we're trying to. And I think that there are certain
23 areas where we bring very specific expertise to that party,
24 specifically in the area of market power, defining what market
25 power is going to be. And I think of interest to everyone of us
26 who are your constituents and my constituents living in the
27 state, the question of a proper needs assessment in a
28 deregulated market.

1 We bring some intellectual horsepower to that argument,
2 and I hope that as the PUC restructuring decision goes along,
3 and with their eventual filing to the Federal Energy Regulatory
4 Commission next year -- late this year and into next year --
5 that we'll continue to have a role.

6 But I have to say that the way the law is structured
7 today, and the way the decision came down from my colleagues at
8 the PUC, it's not clear, certainly not clear on the surface,
9 what role that we could play in support of that. And so, we're
10 in the business of trying to define it, literally, even as we
11 speak.

12 CHAIRMAN LOCKYER: What would be the options?

13 MR. MOORE: Well, the options, it seems to me, range
14 all the way from, we simply step aside and say, whatever the PUC
15 is going to do is just fine.

16 And the second option, it seems to me, or the second
17 end of the range, is that we get into the argument, which we are
18 doing through what are known as the working groups -- and I'm
19 sure that Mr. Neepser will probably find time to refer to that to
20 try again this afternoon -- in terms of the working groups to
21 try and influence the flow of information that the PUC will see
22 before they make their final filing.

23 I think in that end of the spectrum, we have the
24 opportunity to at least change some of the ideas, and I'll refer
25 back to this issue of market power. We think it's critical for
26 the consumer and should be tread on very, very carefully, and we
27 think that some of the arguments that we bring to that are
28 pertinent today.

1 Whether or not they'll prevail, because again, the PUC
2 will have the jurisdiction for the filing, I can't tell you, but
3 I hope that through active and intelligent participation through
4 the papers that we write and the presentations that we make, we
5 will, in fact, influence that.

6 CHAIRMAN LOCKYER: Are there questions from other
7 Members at all? Senator Ayala.

8 SENATOR AYALA: I'd like to inquire, the relationship
9 between the Energy Resources Commission and the PUC, is it
10 duplication of responsibilities here? If so, is there a move
11 afoot to make sure that doesn't occur?

12 MR. MOORE: I know that in some quarters, there's a
13 perceived duplication. I think that the roles, at least as they
14 are currently laid out, with the PUC in a rate, regulatory role,
15 and the California Energy Commission in a policy role for
16 energy, long-term energy policy, and in the siting role where we
17 site -- have siting control over new plants, that that
18 distinction is pretty clear today.

19 I think that in the future, as the restructuring
20 process takes hold, the role of the CUC [sic] starts to get a
21 little clouded, and that we have to redefine a bit more of what
22 we're able to provide to the electricity and, ultimately, to the
23 energy industry at large.

24 The PUC role is likely to shrink somewhat, given that
25 the monopolistic entities, the investor-owned utilities, are
26 going to shrink up their holdings. So, I think that right now,
27 the line is relatively clear, at least as far as the law goes,
28 but it is going to need to be cleared up, certainly, over the

1 course of this next year in order to provide good guidance for a
2 competitive industry.

3 The Little Hoover Commission is due to publish their
4 remarks, I believe, in late summer is the last date that I
5 heard. I think that what comes out of that is likely to be
6 sharpening of those lines, and give all of us a little more
7 guidance as to where we'll probably end up participating.

8 SENATOR AYALA: In terms of the power plants, the PUC
9 is in charge of licensing the power plant, and you're involved
10 with the transmission lines. There's a little competition
11 involved there?

12 MR. MOORE: No, in the case of licensing the power
13 plants for thermal power plants over 50 megawatts, we are in
14 charge of that siting.

15 We also, in the ends, are in charge of the compliance
16 with the regulations post the establishment of the plant.

17 The rate structures and the transmission facilities
18 fall under the jurisdiction of the Public Utilities Commission.

19 SENATOR AYALA: The Chairman of the Commission is now
20 in the Far East, trying to develop some kind of relationship
21 between those countries and California in terms of energy,
22 selling energy, or whatever it is that he's going to do with
23 them?

24 MR. MOORE: Yes, Senator.

25 One of our responsibilities under the Warren-Alquist
26 Act is to foster international cooperation and development of
27 energy resources. And our Chairman has been part of a trade
28 mission to go and expand those horizons, if you will, to try and

1 make sure that some of the opportunities that are opening up for
2 California firms stay open, and that some of the technology
3 transfer that could come here is, in fact, directed to
4 California, at least as far as efficiency goes.

5 SENATOR AYALA: Mostly technology more than anything
6 else.

7 MR. MOORE: Yes, sir. In fact, if you look out at the
8 California economy, one of the things that we sell best is
9 intellectual capital and technology transfer.

10 SENATOR AYALA: Thank you.

11 MR. MOORE: Yes, sir. Thank you.

12 CHAIRMAN LOCKYER: Senator Lewis.

13 SENATOR LEWIS: How many power plants were sited in the
14 last 12 months or last calendar year?

15 MR. MOORE: To the best of my knowledge, Senator, we
16 have only participated in one siting case during that period,
17 and that was for the Hunter's Point power plant in San
18 Francisco.

19 SENATOR LEWIS: How about the last five years?

20 MR. MOORE: I don't have that number, Senator, but I
21 can provide it. It has not been a very large number.

22 SENATOR LEWIS: Isn't that the principal responsibility
23 of the Energy Commission?

24 MR. MOORE: That has been -- as a matter of fact, in
25 looking at the law, that's the interpretation that I would give,
26 is that's a keystone are why we would have an Energy Commission,
27 is to act as the principal siting authority, yes, sir.

28 SENATOR LEWIS: In terms of the last, did you say

1 Hunter's Point?

2 MR. MOORE: Yes, sir, in San Francisco.

3 SENATOR LEWIS: What was the principal consideration?
4 What is your principal responsibility? Are they safety factors,
5 or are they market conditions?

6 MR. MOORE: In the case of the Hunter's Point plant, it
7 was a fairly complicated issue flowing out of what was known as
8 the Biennial Resources Review Process, which set up a goal of
9 trying to reach a certain number of megawatts of new energy. It
10 was a process that was later abandoned, but the plant that came
11 through the process, and still came through to have siting
12 control for us, was the Hunter's Point project.

13 It would basically repower or replace two existing
14 plants in San Francisco in the Hunter's Point area.

15 CHAIRMAN LOCKYER: Senator Petris.

16 SENATOR PETRIS: You've done a lot of research in a lot
17 of areas, according to the poop sheet we have here.

18 MR. MOORE: Yes, sir.

19 SENATOR PETRIS: I think it's very impressive.

20 I was interested in a couple areas. I've been active
21 over the years in preserving as much open space as we can,
22 green, so forth. I see you have a couple of papers here on golf
23 course performance and land development models. One in Rocklin
24 and the other one down south.

25 MR. MOORE: Yes, sir.

26 SENATOR PETRIS: Would you comment on that? What did
27 you find in making this study?

28 MR. MOORE: Yes, sir.

1 SENATOR PETRIS: Was there a model golf course.

2 The reason I ask the question is, when I was more
3 active in this area, our attention was called to the notion that
4 we might want encourage and support more and more golf courses,
5 because they carved out a concern amount of open space, of which
6 the benefit went beyond just persons who played golf.

7 I wondered what approach was approach was taken in
8 this?

9 MR. MOORE: Yes, sir.

10 The models that you're referring to were technical
11 models designed for the bank that I worked for, in this case the
12 holding company for Landmark Land Company, where I tried to
13 analyze whether or not they could go in and build a golf course
14 and sustain it, given membership fees and the premiums that
15 would attach to the golf course from the houses that they built
16 next to it.

17 The answer basically was, without very, very high
18 premiums, and without very, very expensive houses, the golf
19 course wouldn't sustain itself.

20 The second part of your question, though, is perhaps
21 more interesting than the models themselves, which were really
22 designed to go on to a financier and say, "We can make this
23 work."

24 In my old district in Monterey, where I represented
25 Pebble Beach and Carmel Valley, we have, as most of you know, a
26 great number of golf courses. In fact, they're one of the
27 cornerstones of the local economy: Come to Monterey, and you'll
28 have access to the best golf courses in the world.

1 SENATOR PETRIS: They come from as far as away as Japan
2 to play there; don't they?

3 MR. MOORE: Well, all the way from Japan to buy the
4 golf course at least twice that I know of, and the company.

5 And it presents a dilemma for me as a former elected
6 official, and that is, in the preservation of open space, do you
7 allow a private enterprise to come in and literally develop
8 something which has exclusive rights to use, but basically
9 doesn't allow the public to do anything except view it, the
10 general public.

11 And as consequence, if one of the things that you're
12 trying is to do is protect a vista that you view through, a golf
13 course may be the appropriate way to do that. But there may be
14 better open space tools around than turning over development to
15 private golf course developers.

16 And I just say that from my experience in Monterey.
17 I'm not sure we got the best of all worlds by doing it that way.

18 SENATOR PETRIS: Well, wouldn't the pressure increase
19 if you didn't put in a golf course for a lot of housing, for
20 example? Isn't that part of the problem?

21 MR. MOORE: Well, a golf course can act as a buffer
22 zone, although, as I indicated very briefly before, one of the
23 reasons that golf courses become viable financial instruments is
24 because of the premium attached to the houses built around
25 them. So, by definition, they tend to encourage housing
26 development around them.

27 SENATOR PETRIS: We've all seen those ads: Buy this
28 house; it's on the ninth hole.

1 MR. MOORE: Yes, sir.

2 SENATOR PETRIS: You don't have any recommendations to
3 make to us who are interested in open space resulting from those
4 studies?

5 MR. MOORE: Senator, I'll tell you, I would be very
6 happy to sit down with you and discuss some of the modeling that
7 we've done for preserving open space, how to do it, and some of
8 the newer recommendations as far as easements and agricultural
9 use patterns. Absolutely, at your convenience.

10 And yes, I do have some recommendations to make.

11 SENATOR PETRIS: In your term on the board at the
12 county level, did you encounter the Williamson Act, and get
13 impacted by that in your county?

14 MR. MOORE: I absolutely did, sir.

15 SENATOR PETRIS: Has it been a plus or not?

16 MR. MOORE: In Monterey County, I would say that it has
17 been a limited positive effect, in the sense that we had more
18 people enroll in the Williamson Act who were farther away from
19 development pressure than closer, and as a consequence, it
20 didn't have the intended effect of diminishing pressure to
21 convert at the urban limit line. So, the economics basically
22 worked against us.

23 What we were trying to preserve, we needed another tool
24 to do it. I'm not sure that Williamson was the right tool to do
25 it.

26 SENATOR PETRIS: Are you still looking for a tool?

27 MR. MOORE: I think I might have found a tool in some
28 of the newer agricultural easements that can be used. I think

1 ultimately, if adopted, they'll be more successful.

2 SENATOR PETRIS: How does an agricultural easement
3 work?

4 MR. MOORE: Agricultural easement would work by
5 dedicating off a certain zone, a buffer zone, out from its
6 development potential in return for long-term agricultural
7 protection to the land owner to keep land in fee.

8 SENATOR PETRIS: That's similar to Williamson; isn't
9 it?

10 MR. MOORE: Except that the Williamson Act is a rolling
11 dedication, rededication for ten years, and in the case of the
12 easements, they're permanent.

13 SENATOR PETRIS: Thank you.

14 MR. MOORE: You're welcome, sir.

15 CHAIRMAN LOCKYER: Other questions.

16 Maybe you might just briefly mention how much emphasis
17 or significance potential work in renewable energy sources, or
18 energy efficiencies might be in the time you've spent as a
19 member of the Commission. Are they matters that come before
20 you?

21 MR. MOORE: Yes, Senator.

22 The question of renewables obviously plays a big part
23 in the past Commission policies, and I think that as the CTC,
24 the charge for electricity gets debated in the next year, I
25 think that renewables will rise to the front of the debate
26 again, and we'll be bringing forward some of the research that
27 we've got in terms of how they should best be presented and best
28 be renewed.

1 I'd prefer to call the question of renewables a
2 question of preserving options. Right now, we're in the
3 business of promoting certain renewable energy sources that I'm
4 not, at least personally, convinced ought to be there, but we
5 ought to consider them for their option value, where we don't
6 want to lose that because we know that some of the even
7 prodigious supplies of natural gas will one day run out, and we
8 want to make sure that we've got the basis for an alternative
9 there.

10 And I think that we'll be holding hearings on those
11 this next year, and hopefully be using some of the arguments in
12 that to advance the direction and the basis of the CTC.

13 With regard to deficiency standards, I Chair the
14 Efficiency Committee at the Commission, and I'll tell you that
15 we are going to go back, and we're going to reopen the building
16 standards question this next year, and look the every single one
17 of our regulations to make sure not just that it's on the books
18 and that it gets a certain credit for electricity or energy
19 reductions or efficiency, but that it's enforceable.

20 As a product of county government, I'm painfully aware
21 of the constraints on budgets at the local government level, and
22 their ability to actually implement what we hand down to them.

23 So, we're going do to be examining that very, very
24 closely this next year.

25 SENATOR PETRIS: I see you've done a lot of surveys on
26 open space and willingness to pay.

27 MR. MOORE: Yes, sir.

28 SENATOR PETRIS: What is the willingness to pay part?

1 Is that the private persons who want to take land out of use,
2 enlarge the open space area?

3 Who has to be willing here?

4 MR. MOORE: Senator, when we use the term, willingness
5 to pay, economists are referring to how much a person would be
6 willing to give up in a charge of some sort or other to preserve
7 either an open space vista, farm land, or to acquire some new
8 pool, or a park, or something like that.

9 What we'll do is use public opinion surveys to test the
10 sensitivity of people to various charges, a charge like
11 preserving a mountain top that we tried to do down in Riverside
12 County. We tested people's public response to an annual charge
13 of \$25 per person, \$30 per person, to find out how much they'd
14 be willing to give up, either in a tax or an assessment of some
15 sort, to be able to preserve an existing open space entity.

16 Using the range of sensitivity, we then came back and
17 said, "Okay, now given the likely public support for this,
18 here's the kind of bonds issue that you could pass to acquire
19 this; or here's the kind of annual charge you could impose and
20 still survive the ballot box if you want to acquire this asset."
21 And that's the basis of willingness to pay.

22 SENATOR PETRIS: Seems to me that's very helpful to the
23 local people who are looking in that direction.

24 MR. MOORE: When it's done well, it's a great guide,
25 and a good indicator and a prod for local government to do the
26 right thing, if you will.

27 SENATOR PETRIS: Thank you.

28 MR. MOORE: Yes, sir.

1 CHAIRMAN LOCKYER: Senator Ayala.

2 SENATOR AYALA: On the same point, Mr. Chairman.

3 You were involved in the County of San Bernardino in
4 1990 with this willingness to pay survey.

5 MR. MOORE: Yes, sir.

6 SENATOR AYALA: Did that include the 15,000 acres in
7 the Chino Valley preserve, agricultural preserve? Is that where
8 you did your study?

9 MR. MOORE: We did, sir, and what we were trying to
10 find out was, what was the value of preserving that to the
11 public.

12 I'll tell you just as an aside, one of the surprises
13 that came out of that, we thought people would want to preserve
14 open space because it gave benefits to their property value, or
15 because they liked to look at it.

16 In fact, one of the reasons that the public down there
17 said they wanted open space was that it was an antidote to
18 growth, that it was an antidote to what they felt was pressure
19 on their daily lives. And at that time, when we did that
20 survey, that was a total surprise. That was novel news. It's
21 not so novel now.

22 SENATOR AYALA: Since then, Lefco has divided the
23 preserve into three cities: Chino, Chino Hills, and Ontario.
24 They're going to develop it. They're already in the process of
25 doing away with the preserve.

26 MR. MOORE: I was unaware of that. I'm sorry to hear
27 that, Senator.

28 SENATOR AYALA: Thank you.

1 CHAIRMAN LOCKYER: Is there anyone present that wishes
2 to comment?

3 All right, I'll entertain whatever motion --

4 SENATOR BEVERLY: Move we recommend confirmation.

5 CHAIRMAN LOCKYER: All right, Senator Beverly moves
6 confirmation. Call the roll.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Lewis.

10 SENATOR LEWIS: Aye.

11 SECRETARY WEBB: Lewis Aye. Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye. Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

16 CHAIRMAN LOCKYER: Aye.

17 SECRETARY WEBB: Lockyer Aye. Five to zero.

18 MR. MOORE: Thank you, sir.

19 CHAIRMAN LOCKYER: Good luck to you.

20 Mr. Neeper is next.

21 SENATOR BEVERLY: Senator Peace, are you here to
22 introduce the witness?

23 SENATOR PEACE: Yes, I am, Senator.

24 SENATOR BEVERLY: Proceed.

25 SENATOR PEACE: Mr. Chairman and Members, I appreciate
26 the opportunity to just make some brief comments on behalf of
27 Commissioner Neeper by way of introduction.

28 Since you all have available to you more information, I

1 think, any of us probably would ever want to know, including his
2 mother, with respect to his professional affiliations and past
3 historical accomplishments, let me tell you why I personally
4 believe, as chairman of the policy committee who has the
5 principal interaction with the Public Utilities Commission, why
6 it's important that the Senate act in an expeditious manner to
7 confirm Mr. Neeper's nomination.

8 It has more to do with the historical evolution of the
9 person that is before us in terms of the background and history
10 of working a variety of different circumstances, both public and
11 private, and where that happens to bring him in juxtaposition to
12 the Commission and the fellow Commissioners that happen to be
13 there.

14 Mr. Neeper and I may or may not agree on a variety of
15 issues that will come before us in the next few months and,
16 presumably, years that are going to be before the Commission,
17 some of which are particularly acute today and hot topics, so to
18 speak, many of which are the subject of legislation currently
19 moving through this body. And while I wouldn't want to comment,
20 to be honest with you, one way or the other in terms of our
21 likelihood of agreeing on those issues, I suspect we're going to
22 have some substantial disagreements.

23 But what I believe that Mr. Neeper will bring to this
24 Commission is an understanding of and historical involvement in
25 the kind of efforts that are necessary to make complex changes
26 work. To be very candid, my interaction with the Commission
27 over the past few months has left me with an impression of just
28 the opposite, a circumstance in terms of a culture inside that

1 Commission at a staff level, and sometimes at other levels, that
2 seem to have a difficulty digesting and understanding how to get
3 through very complex issues, with many parties on many different
4 sides, and many competing economic interests, and how to do it
5 in a manner in which you can have a work product that is likely
6 to be sustainable and supportable by a variety of different
7 groups of people, so that you're, in the end of the process,
8 while you may have agreed to something, and all exercised a vote
9 to it, you merely see parties back in the courtroom and seeking
10 other venues of appeal.

11 On the Public Utilities Commission in particular, in
12 general and throughout time, but in particular right now, where
13 there is very serious debate associated with the deregulation of
14 all of the various kinds of areas that are the subject matter
15 and purview of the Commission, that is particularly important
16 because the parties before the Commission have venues other than
17 the Commission itself to take their case, including this
18 Legislature and including the courts. And in the case of
19 electric utilities, the FERC, the federal regulatory body, and
20 in the case of the telecommunication companies, the regulatory
21 body, the FCC, that deals with their area.

22 As a result, any work product, if it's going to have
23 any kind of sustainability and, in return, potential beneficial
24 consequence to the state's economy, has to be a work product to
25 which there is some level of consensus. Otherwise, one or more
26 of the many very well-heeled and economically interested parties
27 are simply going to go to other venues. And we're seeing some
28 of that exercised in a variety of areas occur here.

1 I believe what Mr. Neeper brings to the Commission is a
2 background in getting otherwise antagonistic parties to come to
3 agreement. The understanding that part of the process in the
4 work that we do, whether it be on commissions and bodies such as
5 this or in or Legislatures such as this, is to get people of
6 disparate views to begin to see the world from the other side's
7 viewpoint, enough so that they can agree to agree, and then
8 ultimately, be willing to accept work products that often aren't
9 exactly what they thought they were originally coming to the
10 table to seek.

11 The issues before the Commission are extraordinarily
12 complex. They're very difficult. I don't think any of us have
13 the answers to all of the various things that are before them,
14 and it will require, in my view, people of extraordinary
15 background and patience, and an understanding fundamentally that
16 our role as policy makers sometimes goes substantially beyond
17 trying to think of the world's greatest mouse trap in the
18 context of how to solve problems, and sometimes involves
19 mediating and bringing parties together, and tapping into the
20 knowledge and the background that is always buried inside of the
21 interests that are being representing in the often, sometimes
22 even vitriolic impassioned pleas made by the various parties.

23 Mr. Neeper's background as an attorney and dealing with
24 labor issues has him well-qualified to perform that role as a
25 mediator and as a facilitator for those kinds of discussions,
26 and his involvement in San Diego over the years in politically
27 relatively high profile issues, in which he himself may not have
28 taken a well-publicized, but a high profile role, nevertheless

1 was a very important and significant figure behind the scenes in
2 helping people to act more as glue makers, rather than as
3 polarizing forces.

4 He's been effective in that in the past, and I think he
5 can play not just an important role, but perhaps the most
6 important role in potentially turning around the reputation, to
7 be perfectly frank with you, of this Commission, which is one of
8 being -- having a predisposition to vacillate, a difficult time
9 getting factious parties to agree and come to agreement on
10 things that will stick.

11 So, that would be my hope. To be honest, it also puts
12 a great deal of pressure on him, which he has a history of
13 responding to as well.

14 I consider his appointment to be an extraordinary one,
15 and to be perfectly frank, the key appointment that the Governor
16 has made to the Commission, and a very, very important one for
17 us to confirm, and I would hope, confirm in a very expeditious
18 manner.

19 With that, I'll leave him to you.

20 SENATOR BEVERLY: Thank you, Senator.

21 Any questions of Senator Peace?

22 SENATOR AYALA: Mr. Chairman, with that introduction, I
23 move the confirmation.

24 [Laughter.]

25 SENATOR AYALA: I have a couple of questions.

26 Is there a problem getting public input, hearings for
27 rule making process, for the PUC? I get some complaints that
28 the meetings are not that public for public input. Is there a

1 problem with that?

2 MR. NEEPER: Let me deal with your question as having
3 two parts.

4 The first part, if I understood correctly, Senator, was
5 in terms of the ability of entities, or groups, or people to
6 bring issues before the PUC.

7 I have come across, as a result of having office hours
8 in Southern California, particularly, I have come across
9 individuals or small groups who have had issues and who have
10 felt frustrated in terms of being able to get a full airing of
11 those issues as the individuals saw them.

12 My impression is that part of what was being talked
13 about was a function of the staff that the PUC has in the area
14 of consumer outreach, dealing with individuals and receiving
15 complaints from individuals. We have had an overwhelming number
16 of complaints and too few people --

17 SENATOR AYALA: How about staff?

18 MR. NEEPER: -- at the staff level to be able to deal
19 with them. So there has been some frustration on the part of,
20 if you would, the customer level. That we are attempting to
21 deal with in the upcoming budget and the upcoming proposed
22 reorganization by the PUC within the PUC itself.

23 The second part of what you may have had in mind refers
24 to a complaint that I heard when I first came on the Commission,
25 which was, too much of what appears to be decision making isn't
26 being made in open hearing, before God and country, and whoever
27 else cares to attend a publicly noticed meeting.

28 One of my experiences in the past has been to serve for

1 20-some years on a little board of the City of Los Angeles,
2 called the Employee Relations Board. I was on that board for in
3 excess of 20 years. That's a five-person commission, just like
4 the PUC is a five-person commission.

5 And we at the City of Los Angeles lived under the Ralph
6 M. Brown Sunshine Law, if you would. And we got along just
7 famously with the Ralph M. Brown Sunshine Law by never talking
8 outside the hearing room about a case, having the case presented
9 fresh in the hearing room, having all the evidence received, all
10 the argument made in the hearing room, and deciding the case
11 immediately upon the close of argument.

12 So, I have a history of living in that kind of an
13 atmosphere.

14 The PUC cases are much more complex, much more long
15 lived, and have had much more occur before they ever get to the
16 Commissioners. So, the two situations are analogous.
17 Nonetheless, I am used to debate, and decision, and discussion
18 in a public forum, and perhaps have more of a background in that
19 regard than any of the other Commissioners.

20 One of the initiatives that I have attempted to
21 institute is to create the circumstance where we naturally,
22 extemporaneously, discuss among ourselves and with staff, in
23 open meetings, matters that are before us for decision. My --
24 and that initiative was first expressed to the other
25 Commissioners. It has been expressed to the staff, and I've
26 told them that I have various techniques for trying to
27 accomplish that.

28 My understanding is that we are increasingly

1 comfortable in discussing our decision making activity in a
2 public way, and that persons who used to attend PUC meetings in
3 August and September of last year, and fell asleep with the
4 boredom, now keep their eyes open, and occasionally actually
5 listen to spirited debate.

6 I believe we are a long way toward correcting those two
7 criticisms.

8 SENATOR AYALA: I think you're correct, in that a lot
9 of people complain about the staff that probably make
10 determinations that members probably never hear about. They've
11 got too much authority, is what I've heard, and many times the
12 members are not even aware what the staff is doing over there.
13 I don't know how you can correct that.

14 But my other question is, do you have a position on
15 SCA 21 that would provide for direct election of PUC
16 Commissioners?

17 MR. NEEPER: Direct election, there is a proposed bill
18 that has in mind submitting the PUC to Ralph M. Brown. I
19 believe that is your bill, and I've already spoken to you
20 privately, but now I'll speak to you publicly and indicate, as I
21 earlier indicated, that I don't have any difficulty at all with
22 Ralph M. Brown. I am perfectly happy to discuss matters in
23 public.

24 Now, with respect to direct election of Commissioners,
25 I am perfectly happy with the present system. I do not consider
26 it a PUC's Commissioner -- I don't think I was hired to decide
27 the question whether or not I ought to be elected, or whether I
28 ought to be appointed.

1 I view that as question appropriately before the
2 Assembly, Senate, and Governor, or the people, if you will, and
3 peculiarly, not before me.

4 From my point of view, the Commissioners, to a person,
5 are very hard working people who spend 50-60 hours a week, in
6 fact, working PUC cases, working PUC business.

7 To the extent that a Commissioner would spend time
8 after becoming a Commissioner on re-election activities, my own
9 feeling is, that deprives the state of some resource that could,
10 in a very worthwhile way, be spent just doing PUC business.

11 On the other hand, the matter of election as opposed to
12 appointment has been discussed by those who are attracted to the
13 idea of election in terms of accountability, and that
14 characterization has been a characterization that has caused
15 some people to say that they favor an election process, because
16 it then makes one accountable to a constituency.

17 From my point of view, I've never been elected, so I
18 can't say how much more accountable I would feel if I were an
19 elected official than if I am just an appointed.

20 I have to tell you that I feel as accountable being
21 appointed as I think I can possibly feel. I feel accountable to
22 the Governor. I feel accountable to the Legislators who
23 communicate with me. I feel accountable to the parties who want
24 to come in and talk to me, and tell me why I ought to vote one
25 way or the other. I feel accountable to those people that I
26 seek out, because they don't come and see me, and find out what
27 they think. I feel accountable to my fellow Commissioners. I
28 feel accountable to the administrative law judges who work very

1 hard trying to prepare a decision that's appropriate.

2 I don't know how more accountable I can feel, but you
3 all have experience. You have been in situations other than
4 elected, and you have been in situations where you're elected.

5 And so, I end upcoming back to the point, that's really
6 a decision for you, Senator Ayala.

7 SENATOR AYALA: You heard me ask Mr. Moore of the State
8 Energy Commission about the duplication of the two, the PUC and
9 the State Energy Commission.

10 Do you think there's need to consolidate the two bodies
11 into one?

12 MR. NEEPER: Let me respond this way.

13 We have four Commissioners who are concerning
14 themselves with that. Two serving on the Little Hoover
15 Commission to come forward with recommendations.

16 We have parties, utilities, we have Senators and
17 Assemblypersons and Governor's office people, all concerning
18 themselves with that. At the state level we're using a whole
19 bunch of person power resources to investigate that. There must
20 be something there.

21 SENATOR AYALA: Is any move afoot to take the action
22 you just mentioned? Is research taking place right now to see
23 if they can do that?

24 MR. NEEPER: I believe that there's a huge research
25 activity in the Little Hoover Commission to come up with various
26 aspects of governmental reform. My understanding is, it is
27 viewed, at least in our little PUC world, as being heavily
28 involved in looking at the CEC and PUC, and what the future role

1 of the CEC ought to be, what the future role of the PUC ought to
2 be, and what they ought to be in combination with each other.

3 SENATOR AYALA: Thank you very much. I appreciate your
4 answers.

5 CHAIRMAN LOCKYER: One of the issues that's come up on
6 the PUC restructuring issue, that is the sort of institutional
7 environment, not the specific controversies that affect
8 electric, or trucking, or any of the topics that you have to go
9 through, was the idea of some limited form of judicial review of
10 Commission decisions.

11 Perhaps that was discussed during my absence.

12 MR. NEEPER: No, it wasn't, Senator.

13 CHAIRMAN LOCKYER: Have you been involved in any of the
14 consideration of that issue, or do you have a settled opinion
15 about the topic?

16 MR. NEEPER: Let me responds this way. And again, it
17 may be a little more lengthy than you anticipate, but it's
18 because of the way I've been trained to think.

19 From my point of view, the judicial activity in the
20 rule making activity of the Commission is best viewed not by
21 separating out judicial review, but by looking at it from its
22 beginning through its end, which end may be a change in judicial
23 review from that which exists now.

24 From my point of view, we're an awfully good agency
25 that can be improved, in that we have to try to improve
26 ourselves, and you have to look at us. If you find ways in
27 which to improve us, God love you, the Senate, and the Assembly,
28 and the Governor will improve us, whether we think it's

1 appropriate or not.

2 With respect to judicial review, it starts with cases
3 coming in, matters coming in, rule making or judicial. From my
4 point of view, we can improve ourselves by trying, within the
5 time available to a Commissioner, to ensure that the
6 Commissioner is familiar with the case from its initial scoping
7 of issues, and its initial presentation of scoped issues in a
8 pre-hearing conference to the parties.

9 Following that, I believe we benefit, to the extent we
10 can find individual Commissioner time, to the Commissioner being
11 familiar with the evidentiary presentation. No Commissioner is
12 ever going to make all evidentiary hearings of all matters
13 assigned.

14 Somebody asked me how many cases do I have assigned.
15 This morning I guessed 50. I went back and took a look, it's
16 over a hundred. There's just no way I'm going to hear all the
17 evidence in all these cases. As a matter of fact, I'm attending
18 a fair number of evidentiary hearings at this point, as well as
19 pre-hearing conferences.

20 That leads to a situation where there is a proposed
21 decision that comes before the Commission from an ALJ that,
22 hopefully, in a very substantial way, has the assigned
23 Commissioner a party to the formulation of the contents of that
24 proposed decision.

25 Thereafter, we have five Commissioners who vote on the
26 question, rule making or judicial. And I hope that we have a
27 record that permits the five Commissioners to choose among
28 alternative decisions as opposed to be forced to take, yes or

1 no, the decision of an administrative law judge.

2 I believe we are working that way, particularly, for
3 instance, Commissioner Knight is working that way, Commissioner
4 Duque is working that way, and I believe that I am following in
5 their footsteps in trying to work that way very much myself.

6 CHAIRMAN LOCKYER: You would bifurcate somehow the
7 various issues that came up in a single decision?

8 MR. NEEPER: We can separate the issues and create a
9 record that permits us to accept from the administrative law
10 judge one, three, and five, and respectfully differ with two and
11 four.

12 CHAIRMAN LOCKYER: You don't do that now?

13 MR. NEEPER: From my point of view, the most difficult
14 thing is producing a record whereby the parties are done due
15 process by having evidence that permits alternate views, if you
16 would. That's really the trick.

17 The other trick is keeping it moving so we get justice
18 in the lifetime of the parties involved as opposed to their
19 heirs.

20 Then, we've finally gotten to a decision by the
21 Commission which is subject to a claim or a demand for
22 rehearing. And the rehearing process has been framed in terms
23 of legal error. A rehearing is granted when there is legal
24 error determined by the same five Commissioners.

25 There is also a petition for modification, and our
26 interplay between rehearing and modifying is not as clear as it
27 can be. And yet, at times we come upon situations where we made
28 a policy decision that, in retrospect, and after further

1 argument, we want to modify in some respects, but it isn't a
2 function of legal error.

3 CHAIRMAN LOCKYER: Who does the modification?

4 MR. NEEPER: We do. Five Commissioners do it, and that
5 needs clarification.

6 The question then becomes in part, what happens after
7 we've engaged in rehearing? Should it only go to the Supreme
8 Court, as is presently the case, with very few matters going to
9 the Supreme Court and with relief being granted by the Supreme
10 Court. Appropriately, by definition, it never makes an error.
11 But relief to the petitioning party granted seldom.

12 Should it be revised so as to permit a district court
13 of appeal to consider the judicial matters that have come up and
14 not been granted on rehearing? And if it is before a district
15 court of appeals, should it be one district, a specialized
16 district court of appeal, or should it remain the way it is with
17 respect to only going to the California Supreme Court, or should
18 we allow the superior courts in.

19 From my point of view, speaking rough and dirty, I
20 wouldn't let the superior courts or the muni courts into
21 anything involving the PUC. They are so over-burdened. They
22 are so trial court oriented that they're not going to bring the
23 minimum expertise to PUC-type matters. That is, that's an
24 appropriate expenditure of judicial resources.

25 With respect to if you were to decide that you wanted a
26 DCA involved, whether it ought to be to be all DCAs or one in
27 particular, my preference probably would be for a particular
28 DCA, because I think, over time, the judges of that DCA will

1 become educated and it'll prevent forum shopping.

2 I very much fear forum shopping if it's unlimited in
3 terms of which DCA parties can go to. You know how parties who
4 are opposed to particular legislative acts that have been
5 engaged in will shop for a forum that they think will shut you
6 down.

7 Well, that ought to make you mad, if it doesn't. You
8 may be a very patient individual and not have that make you
9 made. But it would make me mad.

10 So, I would kind of oppose and want a specialized
11 judicial forum at the DCA level.

12 I myself would move -- would try to keep it limited to
13 judicial-type cases, as opposed to policy cases, because I do
14 not think that lawyers who have become judges are particularly
15 skilled at making the policy kind of judgments that you, the
16 Senators, you the Assemblypersons, you the Governor make every
17 day of the year. And that we, in our little way, the PUC, make.

18 CHAIRMAN LOCKYER: That was a good answer. I don't
19 mind the length of it at all.

20 I'm seeking a little more specificity. There was a key
21 "if", which was, if you were to decide to have appellate
22 jurisdictions hear a matter, then your preference would be the
23 more specialized single appellate forum.

24 But you didn't express a view as to whether that would
25 be sensible or appropriate to have an appellate hearing at all.

26 MR. NEEPER: I consider it sensible to have it. I
27 consider it sensible not to have it. I consider both sides of
28 the debate to be sensible.

1 If you ask me to make my choice, my choice would be,
2 I'm perfectly happy with the way things are right now, but
3 that's because I never make mistakes. And I can certainly
4 understand a party's desire to go beyond me.

5 I have a very negative attitude towards multiple layers
6 of review because I think it is very wasteful of the public
7 assets and does not produce increased judgement. So that if we
8 are going to have review at the DCA level, then I would like to
9 restrict review by the Supreme Court, in the very greatest way
10 that I possibly could, simply to get finality.

11 CHAIRMAN LOCKYER: They don't seem to have much
12 appetite for these matters, so it may be, as a practical matter,
13 you wouldn't even have to tell them to avoid these on appeal.

14 I mention this only because I think I probably should
15 additionally mention that it's gotten to be controversial in
16 this building because the former Chair was very energetic in
17 trying to oppose legislation that would create an appellate
18 forum to consider disputes on the policy making, or the judicial
19 type orders, not the law making or policy-type decisions that
20 you render.

21 I hear gossip that the Chair might be reappointed. I
22 think we would probably have a very quick and expeditious
23 hearing on that, and he probably would be turned down within two
24 weeks of being reappointed.

25 MR. NEEPER: The first person who heard my views on
26 judicial -- on the appeal aspect of things is the former Chair.
27 And I expressed to him privately what I just expressed to you
28 all, which is, I see both sides of the debate. I do not have a

1 strong view. I do not have a death-defying view on either. I
2 certainly understand DCA --

3 CHAIRMAN LOCKYER: You've ducked that bullet,
4 Commissioner.

5 I partly appreciate the opportunity to have a forum to
6 say Mr. Fessler's gotten himself into the middle of a lot of
7 controversy around here because of the extent to which he has
8 lobbied on this issue. And his term is about up, but there at
9 least is comment that he might be reappointed, and I don't think
10 we'll find him serving with you much longer.

11 Other questions from Members.

12 Well, I must have missed a really brilliant opening.

13 MR. NEEPER: Senator Peace was smashing, and Senator
14 Leonard in his silence was even more smashing.

15 CHAIRMAN LOCKYER: Keep your eye to the silent one.

16 Senator Petris.

17 SENATOR PETRIS: With all this talk about restructuring
18 and everything, do you foresee any impact on the current program
19 for lower rates for low-income households? Would that pretty
20 much continue the way it is?

21 MR. NEEPER: Lower rates for the low-income households,
22 the rates presently paid by low-income households are subsidized
23 rates. They are below cost and -- they are below cost, and they
24 are below what would be set but for the fact that the
25 individuals are low income and need the assistance in order to
26 accomplish our basic mission of universality.

27 The low income -- the low rates are a function in part
28 of legislative action, I believe, as well as PUC action.

1 I anticipate that we, the PUC, in our electricity
2 restructuring road map procedure, are relying on the California
3 Energy Commission to be a substantial source of expertise and
4 interest with respect to renewables. I hope they take an
5 interest in low income as well, but they do not profess to have
6 quite the same level of expertise.

7 I hope that they will provide leadership to us in
8 formulating our attitude with respect to renewables and that
9 kind of thing. And I would be extremely interested in their
10 views with respect to low income, as should you be.

11 But I anticipate that, in essence, the expire package
12 of renewables and low income support, in one way or another,
13 must come to the Legislature for your views on its continuation,
14 the level at which it continues, and the manner in which it
15 continues, and the manner in which it is funded.

16 SENATOR PETRIS: I understand that part of the --

17 MR. NEEPER: Excuse me. I wasn't -- Senator Lockyer
18 pointed me out as having ducked one question.

19 My recommendation would be that we continue the way it
20 is now, essentially, in a restructured electricity industry.

21 SENATOR PETRIS: I understand that part of the drive
22 for restructuring has to do with competition or lack of it.

23 Is that a genuine problem that serves to the detriment
24 of the consumers, or is that just part of the current fashion of
25 deregulating as much as we can in every direction?

26 MR. NEEPER: Senator, I came on at a time that the PUC
27 had made a basic decision to open up generation -- generating
28 electricity to competition and market forces. The decision was

1 a decision already at the time of my appointment.

2 Do I agree with it? I agree with it. It's being
3 done.

4 It is going to benefit California? Presuming that the
5 team that is putting together the package -- and the team is the
6 PUC with the CEC -- but the PUC, the California Legislature and
7 Governor, and the Federal Energy Regulation Commission, in
8 combination, have the opportunity to, in fact, benefit
9 relatively quickly California business, from the mid-sized to
10 the large, California other consumers, from the mid-size to the
11 large. And if we're really good, we have the opportunity
12 relatively quickly to benefit residents, the little folks like
13 you and me when we're in our homes, we have the opportunity to
14 benefit them relatively quickly to the extent that we individual
15 residents want to be benefitted.

16 My wife won't ever change from our present electricity
17 provider because she's just that kind of a person. The rates
18 will come down over time, even for the individual householder
19 who doesn't aggregate and do some direct buying.

20 But from my point of view, there will be a great deal
21 in the next two or three years of individual householders
22 getting together and aggregating and doing direct buying or
23 forcing the equivalent of direct buying of electricity, and it
24 will drive rates down. That's my own view.

25 SENATOR PETRIS: There's a little bit of that going on
26 now.

27 MR. NEEPER: Yes, there is. As a matter of fact,
28 already the pressure for lowering rates is upon the existing

1 three utilities, and it comes in the form of some of the larger
2 consumers saying, "I want out unless you lower my rates, I want
3 out of electricity."

4 SENATOR PETRIS: I'm interested in the allegation, I
5 guess it's a fact, that we have higher rates here than
6 elsewhere. I wonder if other things have been taken into
7 consideration.

8 I guess if you've one a thorough study, they've checked
9 all the angles. We have the highest paid cabbies in the
10 nation. We pay more for stuff than people do elsewhere, but we
11 also get higher pay than they do elsewhere.

12 So, I'm wondering, relatively, if this is a legitimate
13 criticism, that we're paying higher rates for utilities than
14 they pay elsewhere?

15 MR. NEEPER: I do not believe that the higher rates we
16 are paying are a function of a higher wage rate for
17 Californians.

18 I believe the higher rates are historically
19 identifiable in part by reason of our investment in nuclear
20 power, in part by our investment in qualifying facilities or
21 alternate fuel sources, things like that.

22 I believe that it is possible in the next several years
23 to reduce the present burden on California ratepayers relating
24 to particularly nuclear power and other worn out plant -- other
25 noneconomic plants, though it is a bitter pill for many of us to
26 swallow, the cost of getting rid of that burden. But getting
27 rid of that burden without increased costs is worthwhile in
28 order to realize the benefit a few years down the road.

1 And under our order, in fact, what we have done is
2 mandate about a three percent reduction, in any event, for the
3 householders. So, we have mandated over even the period of
4 transition costs a reduction in power rates through a price
5 freeze that doesn't recognize Consumer Price Index.

6 SENATOR PETRIS: Thank you.

7 CHAIRMAN LOCKYER: On that, Senator Ayala.

8 SENATOR AYALA: Just one more question.

9 You've indicated that the PUC is in the process of
10 opening it up for competition.

11 MR. NEEPER: At the generation level.

12 SENATOR AYALA: How did it occur with utilities who
13 have franchises? How can you make those competitive?

14 MR. NEEPER: We have issued an order that says anyone,
15 any entity that owns electricity, can sell anywhere in the state
16 presently served by a privately owned utility. We just said
17 it.

18 And when we said it in our Electricity Restructuring
19 Order, we said it understand circumstances where that might be
20 challenged in a lawsuit by any of the then-existing utilities
21 that wish to engage in a franchise, you can't mess with my
22 franchise theory. And no one has.

23 And the utilities have filed with the Federal Energy
24 Regulation Commission a filing that says they're going along
25 with our decision, and each of them has been before you in one
26 way or another with respect to the legislative process that's
27 going on.

28 And the answer to your question is, while it might have

1 been challenged, and may yet be challenged, it hasn't been yet.

2 SENATOR AYALA: But current policy is to allow whomever
3 to go into franchise area to compete?

4 MR. NEEPER: Absolutely. There are a number of
5 entities -- it'll be like telephone, with potentially some of
6 items ills as well as the benefits.

7 In telephone, long distance and toll, we had resellers
8 who don't own a speck of facility but sell long distance and
9 toll service to you in competition with GTE or Pac Bell, or
10 Roseville, if you would.

11 And the same thing, come January 1, 1998, will exist
12 with respect to electricity. ENRON, or anyone else without
13 ownership of any generating facility at all, will be able to buy
14 electricity in the open market and sell it to Mrs. Neeper at
15 1237 Cypress Court, San Diego, in the SDG&E territory.

16 CHAIRMAN LOCKYER: Sure you want to tell everyone your
17 home address?

18 MR. NEEPER: We're in the telephone book. We've never
19 been secret.

20 SENATOR AYALA: Thank you very much.

21 CHAIRMAN LOCKYER: Direct access. There are at least
22 some who argue that it is technologically infeasible, that it's
23 a nice idea, but that the way the grid technology works, that
24 the idea for all these sort of independent generators running
25 around, selling to customers in a nongeographic way, is
26 infeasible.

27 Could you comment on that contention, and what you've
28 learned from your experience?

1 MR. NEEPER: I couldn't agree more. It is infeasible.
2 It's infeasible in telecommunications.

3 Now we've made both statements.

4 It's infeasible in natural gas. Now we've made three
5 statements.

6 The problem is, Senator, both you and I know it's not
7 infeasible in natural gas. Doesn't work real well, but not
8 because of technological difficulty; simply because there has
9 not been marketing success so far.

10 With respect to telecommunications, there is wild
11 marketing success, if you would, and the technology is just as
12 biting, difficult, as in electricity, I believe.

13 It's infeasible in electricity until the competitors
14 figure out how to make it work. They go out there and sell it
15 effectively.

16 My guess is, it wouldn't do as well as
17 telecommunications. It'll do better than natural gas.

18 CHAIRMAN LOCKYER: That's the constraint, you think, is
19 largely of market acceptability?

20 MR. NEEPER: I believe so. I believe so long as the
21 Commission and the FERC order that the continuing monopoly
22 elements -- transmission and distribution -- be treated as
23 common carriers, everybody who wants to ride on those roads can
24 ride on those roads.

25 And so long as we, the Commission, make sure that any
26 technical, technological infeasibility is dealt with promptly,
27 with a requirement that the technology be solved -- which is
28 what we did in telecommunications. We just said, go on out and

1 solve it. Just as you did with respect to natural gas and
2 electric vehicles, go on out and solve the problems.

3 CHAIRMAN LOCKYER: We may be sort of exploring the
4 limits of analogy here. I guess the question is, is it the
5 Internet or a toll road that people are going to be able to get
6 on?

7 MR. NEEPER: I guarantee it's a toll road, costs
8 involved.

9 The Internet right now is free. But toll road is a far
10 better analogy.

11 There is a cost to using, in telecommunications, the
12 local loop of Pacific Bell or GTE. There's a cost involved in
13 using SDG&E's distribution system, and they've got to be paid
14 for it. It would be absolutely inappropriate not to.

15 CHAIRMAN LOCKYER: Stranded costs. You talked about
16 how, even with the current order of the 100 percent recapture,
17 that there would be some three percent, I think you indicated,
18 reduction in residential rates.

19 MR. NEEPER: In the sense that I meant it, yes, price
20 cap with no recognition of increasing the price cap by reason of
21 the CPI.

22 CHAIRMAN LOCKYER: What about other users? Are there
23 numbers that relate to their use that are similar, or is it just
24 on the residential that there was that price cap?

25 MR. NEEPER: I think it's just residential. Do you
26 happen to know, Wes? Excuse me, it was our Executive Director,
27 Wes Franklin, and he didn't remember off-hand.

28 CHAIRMAN LOCKYER: If he doesn't know, then --

1 MR. NEEPER: It had to do with the then-existing
2 tariffs.

3 CHAIRMAN LOCKYER: This predates you?

4 MR. NEEPER: No, no, no. I voted for it, but my memory
5 of the decision is that it involved -- I said residential, but I
6 believe it's with respect to all tariffs.

7 CHAIRMAN LOCKYER: So, any size user, in effect.

8 MR. NEEPER: Isn't going to get its price increased,
9 though there is a concern that some tariffs may not exist in
10 the future.

11 CHAIRMAN LOCKYER: Are there are similar things
12 happening in other states?

13 MR. NEEPER: Yes, there are that have happened, are
14 happening, will happen.

15 CHAIRMAN LOCKYER: How did they deal with the problem
16 of stranded costs?

17 MR. NEEPER: Differ ways. The last one, New York,
18 dealt with it by not dealing with it. They just ducked the
19 question in their first decision. We didn't duck the question.

20 Others, I believe, have done 80 percent. I'm really
21 not a student of other states. I've kind of concentrated on
22 California.

23 CHAIRMAN LOCKYER: Still, their seems to be no one way
24 to do it?

25 MR. NEEPER: Absolutely not.

26 CHAIRMAN LOCKYER: Has it ever been argued,
27 particularly since you have considerable experience as a labor
28 attorney, that in effect the labor charges are a form of

1 stranded costs in this environment?

2 MR. NEEPER: Yes, yes. We have a specific provision.
3 I was in part responsible for it in the electricity
4 restructuring order in December that recognizes that the order
5 was driven in part in order to hold substantial California
6 business in the state, rather than fleeing, in order to hold a
7 substantial number of California jobs in the state, rather than
8 departing the state. And the continuation of those jobs is a
9 benefit to residents, because residents are the people who hold
10 those jobs.

11 But, there's price that we pay, and that is that
12 potentially, there was going to be restructuring of the work
13 force in the utilities. And that restructuring might involve
14 downsizing, and they're real people, as you all know from your
15 constituencies. They're real people who get downsized, and they
16 need help.

17 So, what we have recognized is that the utility
18 involved in potential downsizing has to provide the help to
19 those California job holders, and the costs of providing that
20 help should be recognized as a stranded cost.

21 Excuse me, that was a lengthy answer, but it's in there
22 from the beginning.

23 CHAIRMAN LOCKYER: No, frankly, the thoughtfulness with
24 which you approach your responsibilities is encouraging.

25 We like to think that at least the Senate is the more
26 deliberative of the two bodies and don't mind finding others
27 that may react that way to complicated issues that slogan
28 doesn't necessarily provide an adequate understanding.

1 There's been, I guess an ongoing discussion of who
2 speaks for consumers, or who in the world gets to talk to you,
3 directly or indirectly. I believe there are these ex-parte
4 communication rules, that you at least have to log it or
5 something?

6 MR. NEEPER: If it occurs under certain circumstances,
7 when we're too close to decision time.

8 CHAIRMAN LOCKYER: Then you have to make a notes of it?

9 MR. NEEPER: Somebody files. Whoever came in and
10 talked to me files an ex-parte -- notice of ex-parte
11 conversation.

12 CHAIRMAN LOCKYER: They have that responsibility?

13 MR. NEEPER: Yes, the Commissioner does not. And the
14 parties, I think, are quite aciduous in filing those.

15 CHAIRMAN LOCKYER: There seems to perhaps be a gap in
16 the regulatory scheme in that respect. This may just be normal
17 Capitol paranoia, or whatever one might call it, but it doesn't
18 seem that the Governor's Office is required to make any filings
19 if they talk to you about an issue. Do they?

20 MR. NEEPER: I don't believe either a Senator is
21 required or the Governor's Office is required.

22 CHAIRMAN LOCKYER: Do either talk to you about issues?

23 MR. NEEPER: Senators frequently write letters on
24 matters of which they become aware that their constituents are
25 interested. I had a whole bunch of letters from Senators and
26 Assemblypersons with respect to raising -- the one that I got
27 the most on was raising rates in the desert in the summertime.

28 If you remember the idea of the air-conditioning tax,

1 which was defeated. But I got a number of communications,
2 mostly in the form of FAX and letter, from Legislators. I got
3 no communication from the Governor's office.

4 And on a number of other issues, I've had occasional
5 phone calls from Legislators just on a factual level.

6 With respect to the Governor's Office, I've had no --
7 no meaningful direction or expression of view on any issue of
8 which I can think, other than kind of a slanting reference once
9 when I was calling about -- the Governor's Office about an
10 advisor question, where there's a Governor's appointment
11 involved. And I made some joking reference to a matter before
12 us, and the individual on the other end said, "Well, I don't
13 disagree with that."

14 Other than that, I've had no communication on those
15 from the Governor, though I do, in all honesty, have to say that
16 the Governor's Office, as I understand it, is very jealous of
17 its right to communicate with a Commissioner as the Governor on
18 any issue that the Governor considers appropriate. Just as you
19 do as a Legislator.

20 CHAIRMAN LOCKYER: I'm sure they would feel that way,
21 and I don't dispute it, but there's the sort of paranoid theory
22 that he's the puppet master.

23 MR. NEEPER: I just need to tell you that I am not in
24 communication.

25 CHAIRMAN LOCKYER: Do ratepayers need an advocate, and
26 should it be internal, external, or how, if there is one?

27 MR. NEEPER: I personally believe that ratepayers will
28 have an advocate on significant matters, whether I want them to

1 have an advocate, whether you want them to have an advocate,
2 whether the Governor wants them to have an advocate, and whether
3 the utilities do. The UCANs and the TURNs of this world, the
4 Mexican-American Legal Defense Fund, Greenlining, those kinds of
5 organizations exist in our world; they exist outside power and
6 telecommunications and such, and they're going to continue to
7 exist, and they do a very worthwhile job.

8 So that the question becomes, should we, the public,
9 fund out of our taxes, or electricity rates, a consumer
10 organization that is in some way or another public.

11 My belief from what I have seen is that I can't go far
12 enough back to deal with the pre-DRA, but from DRA, has I have
13 seen it, DRA does a good job. They think of themselves as
14 underfunded; they think of themselves as understaffed. But
15 everyone thinks of himself as underfunded and understaffed.

16 They do a good job, and they serve a public purpose.
17 Whether or not we ought to continue funding them or not is
18 really a legislative-gubernatorial question, but I'd vote in
19 favor of it myself. I think it's good. It's money well spent
20 by the public to have publicly accountable advocates.

21 Then there is the question, should we reorganize them
22 within our PUC, or should they be outside of the PUC?

23 CHAIRMAN LOCKYER: What do you think?

24 MR. NEEPER: I find kind of a -- I sort of like the
25 argument to take them outside the PUC, put them in a separate
26 agency. From my point of view, if that were to occur, I think
27 they'll do almost as good a job. They won't have as much access
28 to data as easily as they do within the PUC, and that's a loss,

1 but it's a price that would be paid.

2 On the other hand, from my point of view, that leaves
3 the PUC with a staff and a body of five Commissioners whose sole
4 job is to try to resolve from matter to matter the tension
5 between ratepayers and shareholders. And that's our mission, to
6 give full value to the worth of each.

7 CHAIRMAN LOCKYER: We've recently had debate in our
8 House about the winter power outage, and whether the complaint
9 procedures are adequate at PUC.

10 One of the Senators had various documents and
11 essentially claimed that there was too much -- it was too
12 difficult to file a complaint and get some resolution on the
13 matter, and that maybe the PUC doesn't even keep track of those
14 in some way that would useful to your own regulatory efforts or
15 ours.

16 Have you had occasion to look into the way they handle
17 complaints on lost power?

18 MR. NEEPER: Let me be as rank on this as I've been on
19 other matters, to my detriment as opposed to my shining glory.

20 This is a matter on which three or four other
21 Commissioners took an intense interest. And I decided from the
22 beginning that I wasn't going to put another Commissioner's
23 intense interest on the same thing. We had an over-concern on
24 the part of the Commissioners, so I've been relatively light in
25 this area, depending upon that.

26 CHAIRMAN LOCKYER: Fair answer. Doesn't do you any
27 damage at all. We all specialize as well out of necessity.

28 Other questions? Anyone present who'd wish to comment

1 either for or against?

2 I might note there is nothing but complimentary
3 communications about you. No opposition has been expressed.
4 And we sort of solicit people's comments, so that if they're out
5 there, we usually hear them.

6 I can see why, Mr. Neeper, they've been complimentary.

7 MR. NEEPER: Thank you. I should share with you that I
8 attempted to inform all of the organized labor with whom I have
9 dealt that this was coming up and ask that they communicate with
10 you if they wish to, and not tell me what they had to say.

11 CHAIRMAN LOCKYER: Some of them, as well as lots of
12 others have communicated.

13 Senator Beverly.

14 SENATOR BEVERLY: Move we recommend confirmation.

15 CHAIRMAN LOCKYER: We have a motion. Call the roll,
16 please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye. Senator Beverly.

24 SENATOR BEVERLY: Aye.

25 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Lockyer Aye. Five to zero.

28 CHAIRMAN LOCKYER: Good luck.

1 MR. NEEPER: It was pleasant. Don't know that it was
2 fun, but it was pleasant. Thank you.

3 CHAIRMAN LOCKYER: All we can ask, probably.

4 Okay, we have Sally Rakow.

5 Senator, did you wish to make a comment on the previous
6 matter?

7 SENATOR ROSENTHAL: No, on this one.

8 CHAIRMAN LOCKYER: I know you've been very interested
9 in these matters, and I didn't mean to foreclose any comment.

10 SENATOR ROSENTHAL: My pleasure, Mr. Chairman and
11 Members, to reintroduce to the Committee the Vice Chair of the
12 California Energy Commission, Commissioner Sally Rakow.
13 Governor Wilson has reappointed the Commissioner to the Energy
14 Commission.

15 I urge your support for her confirmation. She has a
16 distinguished record during her first term as a Commissioner.
17 She's presided over energy research and development that is so
18 important to the continued economic development of the state,
19 and she's taken a lead role in major energy facility siting
20 cases. She's also supported efforts to promote international
21 trade opportunities for California-based energy industries and
22 companies.

23 And as a former Chair of the Senate Energy Public
24 Utilities Committee, I enjoyed working with her even if we had
25 differences or disagreements on some policy issues.

26 In my opinion, she has earned and deserves your
27 continued support. Thank you for the opportunity to introduce
28 and to reintroduce and express my support for Commissioner

1 Rakow.

2 CHAIRMAN LOCKYER: Well, is he aware of all your
3 political activities?

4 MS. RAKOW: That was in the nefarious past.

5 CHAIRMAN LOCKYER: Is this full time?

6 MS. RAKOW: This job, yes. My political activities
7 stopped six years ago.

8 CHAIRMAN LOCKYER: It'll benefit the endangered
9 Democrats to have you doing something other than fundraising for
10 Republicans, which you seem to have done in quite an
11 accomplished way.

12 Did you want to open with any comments?

13 MS. RAKOW: Yes, as a matter of fact, I have a written
14 statement, if you will indulge me.

15 Thank you and good afternoon. And it was four and a
16 half years ago when I was before this Committee seeking the
17 recommendation as the public member.

18 As way of background, I'd like to say that I am a
19 fourth generation Californian, and born in San Francisco, raised
20 in Marin County, and being very parochial, that is my home
21 still.

22 But the last five years have certainly been a very
23 hands-on learning experience. There's a never-ending amount to
24 know about energy and environmental issues, and that base-line
25 knowledge is constantly evolving as the technologies advance,
26 and the governance structure changes, which it is now, to meet
27 these new societal requirements.

28 A very basic operating principle at the Commission, at

1 the Energy Commission, is that the public be engaged in our
2 deliberations. And as a few examples of that, one of the
3 Commission's program goals is to ensure that all cost effective
4 energy efficiency improvements are incorporated into the
5 Building and Appliance Standards. Trade organizations, which
6 are active before the Commission and do a very excellent job of
7 representing their particular constituency, are frequently at
8 our public meetings, which, as you know, are every two weeks.

9 However, I do think it's incumbent upon the decision
10 makers to also keep in mind that there are millions of
11 Californians out there who must pay for our decisions, and live
12 and operate under our decisions. We have to balance their voice
13 as to the wisdom of proposed standards against the benefit.

14 On occasion, there have been times when I have felt
15 that the benefit does not out weigh the cost of such a standard,
16 so I have either been opposed to them, or I have sought prudent
17 modification.

18 CHAIRMAN LOCKYER: Could you give an example?

19 MS. RAKOW: Yes, I can. It has been historically in
20 the Commission, every three years there has been a reviewing of
21 the standards and a tightening, and making those standards more
22 stringent.

23 It seemed to me when I was on -- served on that
24 committee in the first two years of my term, that there was
25 not as much accountability or knowledge of whether those
26 standards were actually doing what they were professed to be
27 doing as far as energy savings, whether that was taking
28 place.

1 And through some personal experience, I asked the
2 planning commissioners of departments in my particular small
3 area of the world what their knowledge was. And I found, and I
4 think that others found, that there was not a broad educational
5 implementation of the standards.

6 So, three years ago, we stopped tightening, screwing
7 the standards, and undertook an educational and implementation
8 program of which the Building Industry Association was very
9 involved. We worked with them to better educate the people who
10 are actually doing the plan and review, the architects, the
11 engineers, the developers, everybody involved.

12 And it has been -- this just wasn't my idea, but the
13 committee's idea -- but as a result, I think we've made great
14 progress in energy savings.

15 As a matter of fact, the Appliance and Residential
16 Standard over the years that the Energy Commission has been in
17 existence, are accountable for a great deal of energy savings
18 and conservation. The figure that I was given was that it was
19 the equivalent in the last 15 ten years of 13 500-megawatt power
20 plants. That's not a small little savings.

21 CHAIRMAN LOCKYER: That's how much was saved?

22 MS. RAKOW: That's how much was saved.

23 And then, the projection is that if we just implement
24 what we have on the books right now, and implement it
25 completely -- now, I'm talking about all standards -- it would
26 be a doubling of that savings. So, that was in our last
27 Electricity Report.

28 Anyhow, that is just one example of that. One of the

1 most important functions of the Commission is the siting
2 process, and I know that Senator Lewis referred to this, to
3 ensure that they are, indeed, needed facilities, and they are
4 reviewed for certification in an expeditious, safe, and
5 environmentally acceptable manner.

6 I have served on five power plant siting cases in the
7 last five years. Two of them -- I was presiding member of four
8 of these cases. Two of them were highly controversial cases.

9 We held as many public work shops -- all of our work
10 shops and hearings on siting cases or projects are public --
11 but we held as many as possible in the area of -- the
12 geographic area of concern.

13 The last one, the San Francisco case, which will go
14 down in history probably as the most controversial in the
15 Commission's history, we held 35 of the 45 public meetings were
16 held in the San Francisco area. Many of these were in the
17 evening so that the public could attend.

18 CHAIRMAN LOCKYER: What was the other one that was
19 controversial?

20 MS. RAKOW: The Crockett case was quite controversial.
21 Another case that was withdrawn through the good judgement of
22 the San Diego utility was the South Bay Repowering, and in that
23 case EMF, the electric magnetic fields, were a very hot issue.
24 But all siting cases have hot issues connected with them.

25 I can say that really, after all was said and done, the
26 public has been engaged in all of these siting cases, even
27 though all of the public were not happy with the outcome.

28 As an aside, these cases have -- just these cases that

1 I have served on, have resulted in 733 megawatts of new
2 electrical power, over 1,000 new construction and operation
3 jobs, \$626 million of new construction, and this doesn't count
4 property taxes or other revenues that flow to local
5 government.

6 But the electricity world is continuing to undergo
7 dynamic change, more so in the last five years than since the
8 Securities and Exchange Commission began to regulate the
9 industry in the early part of the century.

10 My fellow Commissioners and I, I feel, are really
11 committed to innovation in the Commission and to be responsive
12 to the changing world. The Commission today is a very different
13 one than the one I came to five years ago, and while it's still
14 in the early stages of redefining itself, its core
15 responsibilities, I think, once retooled by the Commissioners
16 and other interested parties, will continue to bring value to
17 the state.

18 In the meantime, we haven't stood still. Many
19 regulatory burdens of an outdated siting requirement have been
20 discarded, the Building Efficiency Standards have been made more
21 user friendly. The research and development has been focused
22 more on bringing the advanced technologies to the marketplace
23 rather than just having it sit on the shelf. And we have
24 become, as Commissioner Neeper mentioned, we have become a key
25 source of unbiased, credible analysis in the current
26 restructuring proceedings. This is both before CPUC and FERC.

27 So, in closing, I'm very pleased. I understand you've
28 received some letters of support from various entities and

1 individuals. I want to thank them, and thank the Senators.

2 So, here I am.

3 CHAIRMAN LOCKYER: Are there questions from any Member?

4 I'm ready to vote.

5 MS. MICHEL: I need to mention, the Sierra Club is also
6 in support.

7 MS. RAKOW: I don't want to do anything from a
8 unanimous vote, but Senator Lewis did ask about the siting
9 cases, which is our key function. And there have been, in the
10 last five years, seven different siting power plant projects.
11 These are all 50 megawatts and above.

12 SENATOR LEWIS: Thank you.

13 SENATOR BEVERLY: I'm pleased to move that we
14 recommend confirmation.

15 CHAIRMAN LOCKYER: It's good to be near the latter half
16 of the agenda.

17 MS. RAKOW: Everybody's tired.

18 CHAIRMAN LOCKYER: The early ones kind of wear us out.

19 MS. RAKOW: You've heard from very articulate
20 Commissioners.

21 CHAIRMAN LOCKYER: You obviously have a history of
22 doing a very fine job, and we're proud to be able to have you
23 doing what you're doing.

24 We have a motion. Let's call the roll.

25 SECRETARY WEBB: Senator Ayala. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Petris.

28 SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Petris Aye. Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 SECRETARY WEBB: Lockyer Aye.

6 SENATOR AYALA: Ayala Aye.

7 SECRETARY WEBB: Ayala Aye. Five to zero.

8 CHAIRMAN LOCKYER: It's unanimous, thank you.

9 MS. RAKOW: Thank you very much.

10 CHAIRMAN LOCKYER: Good luck.

11 [Thereupon. This portion of the

12 Senate Rules Committee hearing was

13 terminated at approximately 4:20 P.M.]

14 --ooOoo--

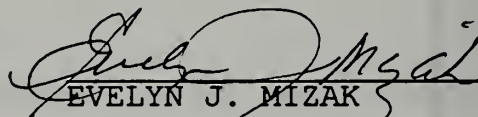
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 1996.


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